

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1516
94TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Public Health, May 1, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3834S.05C

AN ACT

To repeal sections 192.667, 192.925, 197.150, 197.500, 198.006, 198.070, 198.074, 198.075, 198.090, 198.532, 208.152, 208.819, 208.909, 208.912, 208.915, 210.150, 210.152, 210.565, 210.900, 210.906, 210.933, 565.180, 565.182, 565.184, 565.188, 565.200, 660.010, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.070, 660.099, 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.600, 660.603, 660.605, 660.608, 660.620, 660.625, and 660.725, RSMo, and to enact in lieu thereof seventy-one new sections relating to protections for senior citizens, disabled persons, and children, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 192.667, 192.925, 197.150, 197.500, 198.006, 198.070, 2 198.074, 198.075, 198.090, 198.532, 208.152, 208.819, 208.909, 208.912, 208.915, 3 210.150, 210.152, 210.565, 210.900, 210.906, 210.933, 565.180, 565.182, 565.184, 4 565.188, 565.200, 660.010, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 5 660.060, 660.062, 660.067, 660.069, 660.070, 660.099, 660.250, 660.255, 660.260, 6 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 7 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 8 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 9 660.600, 660.603, 660.605, 660.608, 660.620, 660.625, and 660.725, RSMo, are

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 repealed and seventy-one new sections enacted in lieu thereof, to be known as
11 sections 192.667, 192.925, 192.2000, 192.2001, 192.2003, 192.2006, 192.2009,
12 192.2012, 192.2015, 192.2020, 192.2025, 192.2030, 192.2033, 192.2035, 192.2040,
13 192.2100, 192.2103, 192.2106, 192.2109, 192.2112, 192.2115, 192.2118, 192.2121,
14 192.2124, 192.2127, 192.2130, 192.2150, 192.2153, 192.2175, 192.2178, 192.2181,
15 192.2184, 192.2187, 192.2200, 192.2203, 192.2206, 192.2209, 192.2212, 192.2215,
16 192.2218, 192.2221, 192.2224, 192.2227, 192.2250, 192.2253, 197.101, 197.150,
17 198.006, 198.074, 198.075, 198.090, 198.532, 198.700, 198.703, 198.705, 198.708,
18 208.152, 208.819, 208.909, 210.150, 210.152, 210.305, 210.565, 210.900, 210.906,
19 565.180, 565.182, 565.184, 565.188, 565.200, and 660.010, to read as follows:

192.667. 1. All health care providers shall at least annually provide to
2 the department charge data as required by the department. All hospitals shall
3 at least annually provide patient abstract data and financial data as required by
4 the department. Hospitals as defined in section 197.020, RSMo, shall report
5 patient abstract data for outpatients and inpatients. Within one year of August
6 28, 1992, ambulatory surgical centers as defined in section 197.200, RSMo, shall
7 provide patient abstract data to the department. The department shall specify
8 by rule the types of information which shall be submitted and the method of
9 submission.

10 2. The department shall collect data on required nosocomial infection
11 incidence rates from hospitals, ambulatory surgical centers, and other facilities
12 as necessary to generate the reports required by this section. Hospitals,
13 ambulatory surgical centers, and other facilities shall provide such data in
14 compliance with this section.

15 3. No later than July 1, 2005, the department shall promulgate rules
16 specifying the standards and procedures for the collection, analysis, risk
17 adjustment, and reporting of nosocomial infection incidence rates and the types
18 of infections and procedures to be monitored pursuant to subsection 12 of this
19 section. In promulgating such rules, the department shall:

20 (1) Use methodologies and systems for data collection established by the
21 federal Centers for Disease Control and Prevention National [Nosocomial
22 Infection Surveillance System] **Healthcare Safety Network**, or its successor;
23 and

24 (2) Consider the findings and recommendations of the infection control
25 advisory panel established pursuant to section 197.165, RSMo.

26 4. The infection control advisory panel created by section 197.165, RSMo,

27 shall make a recommendation to the department regarding the appropriateness
28 of implementing all or part of the nosocomial infection data collection, analysis,
29 and public reporting requirements of this act by authorizing hospitals,
30 ambulatory surgical centers, and other facilities to participate in the federal
31 Centers for Disease Control and Prevention's National [Nosocomial Infection
32 Surveillance System] **Healthcare Safety Network**, or its successor. The
33 advisory panel shall consider the following factors in developing its
34 recommendation:

35 (1) Whether the public is afforded the same or greater access to
36 facility-specific infection control indicators and rates than would be provided
37 under subsections 2, 3, and 6 to 12 of this section;

38 (2) Whether the data provided to the public are subject to the same or
39 greater accuracy of risk adjustment than would be provided under subsections 2,
40 3, and 6 to 12 of this section;

41 (3) Whether the public is provided with the same or greater specificity of
42 reporting of infections by type of facility infections and procedures than would be
43 provided under subsections 2, 3, and 6 to 12 of this section;

44 (4) Whether the data are subject to the same or greater level of
45 confidentiality of the identity of an individual patient than would be provided
46 under subsections 2, 3, and 6 to 12 of this section;

47 (5) Whether the National [Nosocomial Infection Surveillance System]
48 **Healthcare Safety Network**, or its successor, has the capacity to receive,
49 analyze, and report the required data for all facilities;

50 (6) Whether the cost to implement the nosocomial infection data collection
51 and reporting system is the same or less than under subsections 2, 3, and 6 to 12
52 of this section.

53 5. Based on the affirmative recommendation of the infection control
54 advisory panel, and provided that the requirements of subsection 12 of this
55 section can be met, the department may or may not implement the federal
56 Centers for Disease Control and Prevention [Nosocomial Infection Surveillance
57 System] **National Healthcare Safety Network**, or its successor, as an
58 alternative means of complying with the requirements of subsections 2, 3, and 6
59 to 12 of this section. If the department chooses to implement the use of the
60 federal Centers for Disease Control Prevention [Nosocomial Infection Surveillance
61 System] **National Healthcare Safety Network**, or its successor, as an
62 alternative means of complying with the requirements of subsections 2, 3, and 6

63 to 12 of this section, it shall be a condition of licensure for hospitals and
64 ambulatory surgical centers which opt to participate in the federal program to
65 permit the federal program to disclose facility-specific data to the department as
66 necessary to provide the public reports required by the department. Any hospital
67 or ambulatory surgical center which does not voluntarily participate in the
68 National [Nosocomial Infection Surveillance System] **Healthcare Safety**
69 **Network**, or its successor, shall be required to abide by all of the requirements
70 of subsections 2, 3, and 6 to 12 of this section.

71 6. The department shall not require the resubmission of data which has
72 been submitted to the department of health and senior services or the department
73 of social services under any other provision of law. The department of health and
74 senior services shall accept data submitted by associations or related
75 organizations on behalf of health care providers by entering into binding
76 agreements negotiated with such associations or related organizations to obtain
77 data required pursuant to section 192.665 and this section. A health care
78 provider shall submit the required information to the department of health and
79 senior services:

80 (1) If the provider does not submit the required data through such
81 associations or related organizations;

82 (2) If no binding agreement has been reached within ninety days of
83 August 28, 1992, between the department of health and senior services and such
84 associations or related organizations; or

85 (3) If a binding agreement has expired for more than ninety days.

86 7. Information obtained by the department under the provisions of section
87 192.665 and this section shall not be public information. Reports and studies
88 prepared by the department based upon such information shall be public
89 information and may identify individual health care providers. The department
90 of health and senior services may authorize the use of the data by other research
91 organizations pursuant to the provisions of section 192.067. The department
92 shall not use or release any information provided under section 192.665 and this
93 section which would enable any person to determine any health care provider's
94 negotiated discounts with specific preferred provider organizations or other
95 managed care organizations. The department shall not release data in a form
96 which could be used to identify a patient. Any violation of this subsection is a
97 class A misdemeanor.

98 8. The department shall undertake a reasonable number of studies and

99 publish information, including at least an annual consumer guide, in
100 collaboration with health care providers, business coalitions and consumers based
101 upon the information obtained pursuant to the provisions of section 192.665 and
102 this section. The department shall allow all health care providers and
103 associations and related organizations who have submitted data which will be
104 used in any report to review and comment on the report prior to its publication
105 or release for general use. The department shall include any comments of a
106 health care provider, at the option of the provider, and associations and related
107 organizations in the publication if the department does not change the publication
108 based upon those comments. The report shall be made available to the public for
109 a reasonable charge.

110 9. Any health care provider which continually and substantially, as these
111 terms are defined by rule, fails to comply with the provisions of this section shall
112 not be allowed to participate in any program administered by the state or to
113 receive any moneys from the state.

114 10. A hospital, as defined in section 197.020, RSMo, aggrieved by the
115 department's determination of ineligibility for state moneys pursuant to
116 subsection 9 of this section may appeal as provided in section 197.071, RSMo. An
117 ambulatory surgical center as defined in section 197.200, RSMo, aggrieved by the
118 department's determination of ineligibility for state moneys pursuant to
119 subsection 9 of this section may appeal as provided in section 197.221, RSMo.

120 11. The department of health may promulgate rules providing for
121 collection of data and publication of nosocomial infection incidence rates for other
122 types of health facilities determined to be sources of infections; except that,
123 physicians' offices shall be exempt from reporting and disclosure of infection
124 incidence rates.

125 12. In consultation with the infection control advisory panel established
126 pursuant to section 197.165, RSMo, the department shall develop and disseminate
127 to the public reports based on data compiled for a period of twelve months. Such
128 reports shall be updated quarterly and shall show for each hospital, ambulatory
129 surgical center, and other facility a risk-adjusted nosocomial infection incidence
130 rate for the following types of infection:

131 (1) Class I surgical site infections;

132 (2) Ventilator-associated pneumonia; **provided that, upon the**
133 **recommendation of the infection control advisory panel one or more**
134 **other quality indicators designed to better measure the risk of**

135 **acquiring ventilator-associated pneumonia can be substituted for a**
136 **risk-adjusted nosocomial infection incidence rate;**

137 (3) Central line-related bloodstream infections;

138 (4) Other categories of infections that may be established by rule by the
139 department.

140 The department, in consultation with the advisory panel, shall be authorized to
141 collect and report data on subsets of each type of infection described in this
142 subsection.

143 13. In the event the provisions of this act are implemented by requiring
144 hospitals, ambulatory surgical centers, and other facilities to participate in the
145 federal Centers for Disease Control and Prevention National [Nosocomial
146 Infection Surveillance System] **Healthcare Safety Network**, or its successor,
147 the types of infections to be publicly reported shall be determined by the
148 department by rule and shall be consistent with the infections tracked by the
149 National Nosocomial Infection Surveillance System, or its successor.

150 14. Reports published pursuant to subsection 12 of this section shall be
151 published on the department's Internet web site. The initial report shall be
152 issued by the department not later than December 31, 2006. The reports shall
153 be distributed at least annually to the governor and members of the general
154 assembly.

155 15. The Hospital Industry Data Institute shall publish a report of
156 Missouri hospitals' and ambulatory surgical centers' compliance with
157 standardized quality of care measures established by the federal Centers for
158 Medicare and Medicaid Services for prevention of infections related to surgical
159 procedures. If the Hospital Industry Data Institute fails to do so by July 31,
160 2008, and annually thereafter, the department shall be authorized to collect
161 information from the Centers for Medicare and Medicaid Services or from
162 hospitals and ambulatory surgical centers and publish such information in
163 accordance with subsection 14 of this section.

164 16. The data collected or published pursuant to this section shall be
165 available to the department for purposes of licensing hospitals and ambulatory
166 surgical centers pursuant to chapter 197, RSMo.

167 17. The department shall promulgate rules to implement the provisions
168 of section 192.131 and sections 197.150 to 197.160, RSMo. Any rule or portion of
169 a rule, as that term is defined in section 536.010, RSMo, that is created under the
170 authority delegated in this section shall become effective only if it complies with

171 and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
172 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
173 and if any of the powers vested with the general assembly pursuant to chapter
174 536, RSMo, to review, to delay the effective date, or to disapprove and annul a
175 rule are subsequently held unconstitutional, then the grant of rulemaking
176 authority and any rule proposed or adopted after August 28, 2004, shall be
177 invalid and void.

192.925. 1. To increase public awareness of the problem of elder abuse
2 and neglect **and financial exploitation of the elderly**, the department of
3 health and senior services shall implement an education and awareness
4 program. Such program shall have the goal of reducing the incidences of elder
5 abuse and neglect **and financial exploitation of the elderly**, and may focus
6 on:

7 (1) The education and awareness of mandatory reporters on their
8 responsibility to report elder abuse and neglect **and financial exploitation of**
9 **the elderly**;

10 (2) Targeted education and awareness for the public on the problem,
11 identification and reporting of elder abuse and neglect **and financial**
12 **exploitation of the elderly**;

13 (3) Publicizing the elder abuse and neglect hot line telephone number;

14 (4) Education and awareness for law enforcement agencies and
15 prosecutors on the problem and identification of elder abuse and neglect **and**
16 **financial exploitation of the elderly**, and the importance of prosecuting cases
17 pursuant to chapter 565, RSMo; and

18 (5) Publicizing the availability of background checks prior to hiring an
19 individual for caregiving purposes.

20 2. The department of social services and facilities licensed pursuant to
21 chapters 197 and 198, RSMo, shall cooperate fully with the department of health
22 and senior services in the distribution of information pursuant to this program.

[660.050.] **192.2000.** 1. The "Division of Aging" is hereby transferred
2 from the department of social services to the department of health and senior
3 services by a type I transfer as defined in the Omnibus State Reorganization Act
4 of 1974. **All references in the revised statutes of Missouri to the division**
5 **of aging shall include any division or divisions established by the**
6 **department as a successor division or divisions to the division of**
7 **aging.** The division shall aid and assist the elderly and low-income

8 [handicapped] adults **with disabilities** living in the state of Missouri to secure
9 and maintain maximum economic and personal independence and dignity. The
10 division shall regulate adult long-term care facilities pursuant to the laws of this
11 state and rules and regulations of federal and state agencies, to safeguard the
12 lives and rights of residents in these facilities.

13 2. In addition to its duties and responsibilities enumerated pursuant to
14 other provisions of law, the division shall:

15 (1) Serve as advocate for the elderly by promoting a comprehensive,
16 coordinated service program through administration of Older Americans Act
17 (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

18 (2) Assure that an information and referral system is developed and
19 operated for the elderly, including information on the Missouri care options
20 program;

21 (3) Provide technical assistance, planning and training to local area
22 agencies on aging;

23 (4) Contract with the federal government to conduct surveys of long-term
24 care facilities certified for participation in the Title XVIII program;

25 (5) Serve as liaison between the department of health and senior services
26 and the Federal Health Standards and Quality Bureau, as well as the Medicare
27 and Medicaid portions of the United States Department of Health and Human
28 Services;

29 (6) Conduct medical review (inspections of care) activities such as
30 utilization reviews, independent professional reviews, and periodic medical
31 reviews to determine medical and social needs for the purpose of eligibility for
32 Title XIX, and for level of care determination;

33 (7) Certify long-term care facilities for participation in the Title XIX
34 program;

35 (8) Conduct a survey and review of compliance with P.L. 96-566 Sec.
36 505(d) for Supplemental Security Income recipients in long-term care facilities
37 and serve as the liaison between the Social Security Administration and the
38 department of health and senior services concerning Supplemental Security
39 Income beneficiaries;

40 (9) Review plans of proposed long-term care facilities before they are
41 constructed to determine if they meet applicable state and federal construction
42 standards;

43 (10) Provide consultation to long-term care facilities in all areas governed

44 by state and federal regulations;

45 (11) Serve as the central state agency with primary responsibility for the
46 planning, coordination, development, and evaluation of policy, programs, and
47 services for elderly persons in Missouri consistent with the provisions of
48 subsection 1 of this section and serve as the designated state unit on aging, as
49 defined in the Older Americans Act of 1965;

50 (12) With the advice of the governor's advisory council on aging, develop
51 long-range state plans for programs, services, and activities for elderly [and
52 handicapped] persons **and long-term care options for elderly persons and**
53 **adults with disabilities**. State plans should be revised annually and should
54 be based on area agency on aging plans, statewide priorities, and state and
55 federal requirements;

56 (13) Receive and disburse all federal and state funds allocated to the
57 division and solicit, accept, and administer grants, including federal grants, or
58 gifts made to the division or to the state for the benefit of elderly persons in this
59 state;

60 (14) Serve, within government and in the state at large, as an advocate
61 for elderly persons by holding hearings and conducting studies or investigations
62 concerning matters affecting the health, safety, and welfare of elderly persons and
63 by assisting elderly persons to assure their rights to apply for and receive
64 services and to be given fair hearings when such services are denied;

65 (15) Provide information and technical assistance to the governor's
66 advisory council on aging and keep the council continually informed of the
67 activities of the division;

68 (16) After consultation with the governor's advisory council on aging,
69 make recommendations for legislative action to the governor and to the general
70 assembly;

71 (17) Conduct research and other appropriate activities to determine the
72 needs of elderly persons in this state, including, but not limited to, their needs
73 for social and health services, and to determine what existing services and
74 facilities, private and public, are available to elderly persons to meet those needs;

75 (18) Maintain [and serve as a clearinghouse for] **information regarding**
76 **resources that provide** up-to-date information and technical assistance related
77 to the needs and interests of elderly persons and persons with Alzheimer's
78 disease or related dementias, including information on the Missouri care options
79 program, dementia-specific training materials and dementia-specific

80 trainers. Such dementia-specific information and technical assistance shall be
81 [maintained and] provided in consultation with agencies, organizations and/or
82 institutions of higher learning with expertise in dementia care;

83 (19) Provide area agencies on aging with assistance in applying for
84 federal, state, and private grants and identifying new funding sources;

85 (20) Determine area agencies on aging annual allocations for Title XX and
86 Title III of the Older Americans Act expenditures;

87 (21) Provide transportation services, home-delivered and congregate
88 meals, in-home services, counseling and other services to the elderly and
89 low-income [handicapped] adults **with disabilities** as designated in the Social
90 Services Block Grant Report, through contract with other agencies, and shall
91 monitor such agencies to ensure that services contracted for are delivered and
92 meet standards of quality set by the division;

93 (22) Monitor the process pursuant to the federal Patient
94 Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which
95 information is provided to patients concerning durable powers of attorney and
96 living wills.

97 3. The division director, subject to the supervision of the director of the
98 department of health and senior services, shall be the chief administrative officer
99 of the division and shall exercise for the division the powers and duties of an
100 appointing authority pursuant to chapter 36, RSMo, to employ such
101 administrative, technical and other personnel as may be necessary for the
102 performance of the duties and responsibilities of the division.

103 4. The division may withdraw designation of an area agency on aging only
104 when it can be shown the federal or state laws or rules have not been complied
105 with, state or federal funds are not being expended for the purposes for which
106 they were intended, or the elderly are not receiving appropriate services within
107 available resources, and after consultation with the director of the area agency
108 on aging and the area agency board. Withdrawal of any particular program of
109 services may be appealed to the director of the department of health and senior
110 services and the governor. In the event that the division withdraws the area
111 agency on aging designation in accordance with the Older Americans Act, the
112 division shall administer the services to clients previously performed by the area
113 agency on aging until a new area agency on aging is designated.

114 5. Any person hired by the department of health and senior services after
115 August 13, 1988, to conduct or supervise inspections, surveys or investigations

116 pursuant to chapter 198, RSMo, shall complete at least one hundred hours of
117 basic orientation regarding the inspection process and applicable rules and
118 statutes during the first six months of employment. Any such person shall
119 annually, on the anniversary date of employment, present to the department
120 evidence of having completed at least twenty hours of continuing education in at
121 least two of the following categories: communication techniques, skills
122 development, resident care, or policy update.

123 The department of health and senior services shall by rule describe the
124 curriculum and structure of such continuing education.

125 6. The division may issue and promulgate rules to enforce, implement and
126 effectuate the powers and duties established in this section [and sections 198.070
127 and 198.090, RSMo, and sections 660.250 and 660.300 to 660.320], **section**
128 **192.2100, sections 192.2150 to 192.2187, and section 198.090, RSMo.** Any
129 rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
130 is created under the authority delegated in this section shall become effective
131 only if it complies with and is subject to all of the provisions of chapter 536,
132 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
133 RSMo, are nonseverable and if any of the powers vested with the general
134 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
135 or to disapprove and annul a rule are subsequently held unconstitutional, then
136 the grant of rulemaking authority and any rule proposed or adopted after August
137 28, 2001, shall be invalid and void.

138 7. Missouri care options is a program, operated and coordinated by the
139 **[division of aging] department**, which informs individuals of the variety of care
140 options available to them when they may need long-term care.

141 8. The division shall, by January 1, 2002, establish minimum
142 dementia-specific training requirements for employees involved in the delivery of
143 care to persons with Alzheimer's disease or related dementias who are employed
144 by skilled nursing facilities, intermediate care facilities, residential care facilities,
145 agencies providing in-home care services authorized by the **[division of aging]**
146 **department**, adult day-care programs, independent contractors providing direct
147 care to persons with Alzheimer's disease or related dementias and the **[division**
148 **of aging] department**. Such training shall be incorporated into new employee
149 orientation and ongoing in-service curricula for all employees involved in the care
150 of persons with dementia. The department of health and senior services shall,
151 by January 1, 2002, establish minimum dementia-specific training requirements

152 for employees involved in the delivery of care to persons with Alzheimer's disease
153 or related dementias who are employed by home health and hospice agencies
154 licensed by chapter 197, RSMo. Such training shall be incorporated into the
155 home health and hospice agency's new employee orientation and ongoing
156 in-service curricula for all employees involved in the care of persons with
157 dementia. The dementia training need not require additional hours of orientation
158 or ongoing in-service. Training shall include at a minimum, the following:

159 (1) For employees providing direct care to persons with Alzheimer's
160 disease or related dementias, the training shall include an overview of
161 Alzheimer's disease and related dementias, communicating with persons with
162 dementia, behavior management, promoting independence in activities of daily
163 living, and understanding and dealing with family issues;

164 (2) For other employees who do not provide direct care for, but may have
165 daily contact with, persons with Alzheimer's disease or related dementias, the
166 training shall include an overview of dementias and communicating with persons
167 with dementia.

168 As used in this subsection, the term "employee" includes persons hired as
169 independent contractors. The training requirements of this subsection shall not
170 be construed as superceding any other laws or rules regarding dementia-specific
171 training.

172 **9. All powers, duties, and functions of the board of nursing home**
173 **administrators contained in chapter 344, RSMo, are transferred by type**
174 **I transfer to the department of health and senior services.**

[660.060.] **192.2001.** All authority, powers, duties, functions, records,
2 personnel, property, contracts, budgets, matters pending and other pertinent
3 vestiges of the division of aging shall be transferred to the department of health
4 and senior services.

[660.053.] **192.2003.** As used in [section 199.025, RSMo, and sections
2 660.050 to 660.057 and 660.400 to 660.420] **sections 192.2000 to 192.2040 and**
3 **sections 192.2200 to 192.2227,** the following terms mean:

4 (1) "Area agency on aging", the agency designated by the division in a
5 planning and service area to develop and administer a plan and administer
6 available funds for a comprehensive and coordinated system of services for the
7 elderly and persons with disabilities who require similar services;

8 (2) "Area agency board", the local policy-making board which directs the
9 actions of the area agency on aging under state and federal laws and regulations;

- 10 (3) **"Department", the department of health and senior services;**
11 (4) "Director", the director of the [division of aging of the Missouri]
12 department of [social] **health and senior services, or the director's designee;**
13 [(4) "Division", the division of aging of the Missouri department of social
14 services;]
- 15 (5) "Elderly" or "elderly persons", persons who are sixty years of age or
16 older;
- 17 (6) "Disability", a mental or physical impairment that substantially limits
18 one or more major life activities, whether the impairment is congenital or
19 acquired by accident, injury or disease, where such impairment is verified by
20 medical findings;
- 21 (7) "Local government", a political subdivision of the state whose authority
22 is general or a combination of units of general purpose local governments;
- 23 (8) "Major life activities", functions such as caring for one's self,
24 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning,
25 and working;
- 26 (9) ["Medicaid"] **"MO HealthNet"**, medical assistance provided under
27 section 208.151, RSMo, et seq., in compliance with Title XIX, Public Law 89-97,
28 1965 amendments to the Social Security Act (42 U.S.C. 301 et seq.), as amended;
- 29 (10) "Protective services", a service provided by the [Missouri division of
30 aging in response to the need for protection from harm or neglect to eligible
31 adults under sections 660.250 to 660.295] **state or other governmental or**
32 **private organizations or individuals to ensure the safety and well being**
33 **of elderly persons or adults with disabilities who are in danger of being**
34 **mistreated or neglected, and are unable to take care of themselves or**
35 **protect themselves from harm;**
- 36 (11) "Registered caregiver", a person who provides primary long-term care
37 for an elderly person and wishes to receive information, services or support from
38 the shared care program;
- 39 (12) "Shared care", a program administered by the [division of aging]
40 **department** in which Missouri families who provide primary long-term care for
41 an elderly person and register as a shared care member with the [division of
42 aging] **department** shall receive access to certain supportive services and may
43 receive a state tax credit;
- 44 (13) "Shared care community project", a project in a community that offers
45 to help support shared care participation through development of programs;

46 (14) "Shared care member", a registered caregiver or shared care provider
47 who registers with the [division of aging] **department** in order to participate in
48 the shared care program;

49 (15) "Shared care provider", any state authorized long-term care provider
50 in the state, including, but not limited to, in-home, home health, hospice, adult
51 day care, residential care facility or assisted living facility, or nursing home, who
52 voluntarily registers with the [division of aging] **department** to be available as
53 a resource for the shared care program;

54 (16) "Shared care tax credit", a tax credit to registered caregivers who
55 meet the requirements of section [660.055] **192.2009**.

 [660.054.] **192.2006**. 1. The [division of aging of the department of
2 social] **department of health and senior** services shall establish a program
3 to help families who provide the primary long-term care for an elderly
4 person. This program shall be known as "shared care" and has the following
5 goals:

6 (1) To provide services and support for families caring for an elderly
7 person;

8 (2) To increase awareness of the variety of privately funded services which
9 may be available to those persons caring for an elderly person;

10 (3) To increase awareness of the variety of government services which may
11 be available to those caring for an elderly person;

12 (4) Recognition on an annual basis by the governor for those families
13 participating in the shared care program and community project groups
14 participating in the shared care program;

15 (5) To provide a tax credit to members who meet the qualifications
16 pursuant to section [660.055] **192.2009**; and

17 (6) To promote community involvement by:

18 (a) Providing local communities information about the shared care
19 program and to encourage the establishment of support groups where none are
20 available and to support existing support groups, and other programs for shared
21 care members and providers to share ideas, information and resources on caring
22 for an elderly person; and

23 (b) Encouraging local home care, adult day care or other long-term care
24 providers, who have regularly scheduled training sessions for paid caregivers, to
25 voluntarily invite shared care members to participate in education and training
26 sessions at no cost to the registered caregivers. Such providers shall not be held

27 liable in any civil or criminal action related to or arising out of the participation
28 or training of shared care members in such sessions.

29 2. To further the goals of the shared care program, the director shall:

30 (1) Promulgate specific rules and procedures for the shared care
31 program. Any rule or portion of a rule, as that term is defined in section 536.010,
32 RSMo, that is created under the authority delegated in sections [660.050 to
33 660.057] **192.2000 to 192.2012** shall become effective only if it complies with and
34 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
35 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is
36 of no force and effect and repealed. Nothing in this section shall be interpreted
37 to repeal or affect the validity of any rule filed or adopted prior to August 28,
38 1999, if it fully complied with all applicable provisions of law. This section and
39 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
40 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
41 date or to disapprove and annul a rule are subsequently held unconstitutional,
42 then the grant of rulemaking authority and any rule proposed or adopted after
43 August 28, 1999, shall be invalid and void;

44 (2) Maintain a registry of names and addresses of shared care members
45 and shared care providers;

46 (3) [Compile a list, updated annually, of] **Maintain a web site with**
47 **links to** public and private resources, services and programs which may be
48 available to assist and support the registered caregiver with caring for the
49 elderly. Such [list] **web site** shall be [given] **available** to shared care members
50 along with information on shared care providers in their community. Private
51 organizations and providers shall be responsible for [providing] **updating**
52 information to the [division of aging] **department** for inclusion on the [list] **web**
53 **site**. The [division of aging] **department** shall establish reporting procedures
54 for private organizations and publicly disseminate the [division's] **department's**
55 guidelines statewide;

56 (4) [Compile and distribute to shared care members] **Post information**
57 **on the Internet regarding resources that contain** information about [the]
58 services and benefits of the shared care program [and a bibliography of] **with**
59 **links to** resources and materials with information helpful to such members. The
60 [bibliography will give members an overview] **web links shall provide access**
61 **to an array** of available information and is not required to be comprehensive;

62 (5) Encourage shared care providers, consumer groups, churches and other

63 philanthropic organizations to help local communities develop local support
64 systems where none are available and to support existing support groups for
65 persons caring for elderly persons and make [division] **department** staff
66 available, if possible;

67 (6) In conjunction with the director of revenue, develop a physician
68 certification for shared care tax credit form to be given to registered caregivers
69 upon request. The form shall require, but is not limited to:

70 (a) Identifying information about the registered caregiver for tax
71 purposes, and the signature of the registered caregiver certifying that he or she
72 qualifies for the shared care tax credit as provided in section [660.055] **192.2009**;

73 (b) Identifying information about the elderly person receiving care for
74 verification purposes;

75 (c) Identifying information about and the signature of the physician
76 licensed pursuant to the provisions of chapter 334, RSMo, for verification and
77 certification purposes;

78 (d) A description by such physician of the physical or mental condition of
79 the elderly person that makes them incapable of living alone and lists the care,
80 assistance with daily living and oversight needed at home in order to prevent
81 placement in a facility licensed pursuant to chapter 198, RSMo; and

82 (e) A complete explanation of the shared care tax credit and its guidelines
83 and directions on completion of the form and how to file for the shared care tax
84 credit with the department of revenue; and

85 (7) In conjunction with the director of revenue, develop a [division of
86 aging] **department** certification for shared care tax credit form to be given at the
87 request of the registered caregivers when a [division of aging] **department**
88 assessment has been completed for other purposes. The form shall require, but
89 is not limited to:

90 (a) Identifying information about the registered caregiver for tax
91 purposes, and the signature of the registered caregiver certifying that he or she
92 qualifies for the shared care tax credit as provided in section [660.055] **192.2009**;

93 (b) Identifying information about the elderly person receiving care for
94 verification purposes;

95 (c) Identifying information about and the signature of the [division of
96 aging] **department** staff for verification and certification purposes;

97 (d) A description by the [division of aging] **department** staff of the
98 physical or mental condition of the elderly person that makes them incapable of

99 living alone and lists the care, assistance with daily living and oversight needed
100 at home in order to prevent placement in a facility licensed pursuant to chapter
101 198, RSMo; and

102 (e) A complete explanation of the shared care tax credit and its guidelines
103 and directions for completing the form and how to file for the shared care tax
104 credit with the department of revenue.

105 3. Funds appropriated for the shared care program shall be appropriated
106 to and administered by the department of [social] **health and senior** services.

[660.055.] **192.2009.** 1. Any registered caregiver who meets the
2 requirements of this section shall be eligible for a shared care tax credit in an
3 amount not to exceed five hundred dollars to defray the cost of caring for an
4 elderly person. In order to be eligible for a shared care tax credit, a registered
5 caregiver shall:

6 (1) Care for an elderly person, age sixty or older, who:

7 (a) Is physically or mentally incapable of living alone, as determined and
8 certified by his or her physician licensed pursuant to chapter 334, RSMo, or by
9 the [division of aging] **department** staff when an assessment has been
10 completed for the purpose of qualification for other services; and

11 (b) Requires assistance with activities of daily living to the extent that
12 without care and oversight at home would require placement in a facility licensed
13 pursuant to chapter 198, RSMo; and

14 (c) Under no circumstances, is able or allowed to operate a motor vehicle;
15 and

16 (d) Does not receive funding or services through [Medicaid] **MO**
17 **HealthNet** or social services block grant funding;

18 (2) Live in the same residence to give protective oversight for the elderly
19 person meeting the requirements described in subdivision (1) of this subsection
20 for an aggregate of more than six months per tax year;

21 (3) Not receive monetary compensation for providing care for the elderly
22 person meeting the requirements described in subdivision (1) of this subsection;
23 and

24 (4) File the original completed and signed physician certification for
25 shared care tax credit form or the original completed and signed [division of
26 aging] **department** certification for shared care tax credit form provided for in
27 subsection 2 of section [660.054] **192.2006** along with such caregiver's Missouri
28 individual income tax return to the department of revenue.

29 2. The tax credit allowed by this section shall apply to any year beginning
30 after December 31, 1999.

31 3. Any rule or portion of a rule, as that term is defined in section 536.010,
32 RSMo, that is created under the authority delegated in sections [660.050 to
33 660.057] **192.2000 to 192.2012** shall become effective only if it complies with and
34 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
35 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is
36 of no force and effect and repealed. Nothing in this section shall be interpreted
37 to repeal or affect the validity of any rule filed or adopted prior to August 28,
38 1999, if it fully complied with all applicable provisions of law. This section and
39 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
40 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
41 date or to disapprove and annul a rule are subsequently held unconstitutional,
42 then the grant of rulemaking authority and any rule proposed or adopted after
43 August 28, 1999, shall be invalid and void.

44 4. Any person who knowingly falsifies any document required for the
45 shared care tax credit shall be subject to the same penalties for falsifying other
46 tax documents as provided in chapter 143, RSMo.

 [660.057.] **192.2012.** 1. On and after August 13, 1984, an area agency
2 on aging shall operate with local administrative responsibility for Title III of the
3 Older Americans Act, and other funds allocated to it by the [division]
4 **department**. The area agency board shall be responsible for all actions of an
5 area agency on aging in its jurisdiction, including, but not limited to, the
6 accountability for funds and compliance with federal and state laws and
7 rules. Such responsibility shall include all geographic areas in which the area
8 agency on aging is designated to operate. The respective area agency board shall
9 appoint a director of the area agency on aging in its jurisdiction. [Beginning
10 January 1, 1995,] The director of the area agency on aging shall submit an
11 annual performance report to the [division] **department** director, the speaker
12 of the house of representatives, the president pro tempore of the senate and the
13 governor. Such performance report shall give a detailed accounting of all funds
14 which were available to and expended by the area agency on aging from state,
15 federal and private sources.

16 2. Each area agency on aging shall have an area agency on aging advisory
17 council, which shall:

18 (1) Recommend basic policy guidelines for the administration of the

19 activities of the area agencies on aging on behalf of elderly persons and advise the
20 area agency on aging on questions of policy;

21 (2) Advise the area agency on aging with respect to the development of the
22 area plan and budget, and review and comment on the completed area plan and
23 budget before its transmittal to the [division] **department**;

24 (3) Review and evaluate the effectiveness of the area agency on aging in
25 meeting the needs of elderly persons in the planning and service area;

26 (4) Meet at least quarterly, with all meetings being subject to sections
27 610.010 to 610.030, RSMo.

28 3. Each area agency board shall:

29 (1) Conduct local planning functions for Title III and Title XX, and such
30 other funds as may be available;

31 (2) Develop a local plan for service delivery, subject to review and
32 approval by the [division] **department**, that complies with federal and state
33 requirements and in accord with locally determined objectives consistent with the
34 state policy on aging;

35 (3) Assess the needs of elderly persons within the planning and service
36 delivery area for service for social and health services, and determine what
37 resources are currently available to meet those needs;

38 (4) Assume the responsibility of determining services required to meet the
39 needs of elderly persons, assure that such services are provided within the
40 resources available, and determine when such services are no longer needed;

41 (5) Endeavor to coordinate and expand existing resources in order to
42 develop within its planning and service area a comprehensive and coordinated
43 system for the delivery of social and health services to elderly persons;

44 (6) Serve as an advocate within government and within the community at
45 large for the interests of elderly persons within its planning and service area;

46 (7) Make grants to or enter into contracts with any public or private
47 agency for the provision of social or health services not otherwise sufficiently
48 available to elderly persons within the planning and service area;

49 (8) Monitor and evaluate the activities of its service providers to ensure
50 that the services being provided comply with the terms of the grant or
51 contract. Where a provider is found to be in breach of the terms of its grant or
52 contract, the area agency shall enforce the terms of the grant or contract;

53 (9) Conduct research, evaluation, demonstration or training activities
54 appropriate to the achievement of the goal of improving the quality of life for

55 elderly persons within its planning and service area;

56 (10) Comply with [division] **department** requirements that have been
57 developed in consultation with the area agencies for client and fiscal information,
58 and provide to the [division] **department** information necessary for federal and
59 state reporting, program evaluation, program management, fiscal control and
60 research needs.

61 4. [Beginning January 1, 1995,] The records of each area agency on aging
62 shall be audited at least every other year. All audits required by the Older
63 Americans Act of 1965, as amended, shall satisfy this requirement.

[660.058.] **192.2015.** 1. The [division of aging] **department** shall
2 provide budget allotment tables to each area agency on aging by January first of
3 each year. Each area agency on aging shall submit its area plan, area budget and
4 service contracts to the [division of aging] **department** by March first of each
5 year. Each April, the area agencies on aging shall present their plans to the
6 [division of aging] **department** in a public hearing scheduled by the [division]
7 **department** and held in the area served by the area agency on aging. Within
8 thirty days of such hearing, the [division] **department** shall report findings and
9 recommendations to the board of directors for the area agency on aging, the area
10 agency on aging advisory council, the members of the senate [budget]
11 **appropriations** committee and the members of the house [appropriations
12 committee for social services and corrections] **budget committee**.

13 2. Each area agency on aging shall include in its area plan performance
14 measures and outcomes to be achieved for each year covered by the plan. Such
15 measures and outcomes shall also be presented to the [division] **department**
16 during the public hearing.

17 3. The [division of aging] **department** shall conduct on-site monitoring
18 of each area agency on aging at least once a year. The [division of aging]
19 **department** shall send all monitoring reports to the area agency on aging
20 advisory council and the board of directors for the area agency which is the
21 subject of the reports.

[660.725.] **192.2020.** 1. Each area agency on aging may establish a
2 program that provides for volunteers to provide transportation within the
3 geographic area of the agency to elderly persons to health care facilities for
4 scheduled appointments or for other health care-related purposes.

5 2. Such volunteers shall utilize their own vehicles and shall be
6 reimbursed for miles driven to provide transportation for elderly persons under

7 the program. The area agency on aging may pay each volunteer a mileage
8 allowance or reimbursement at the same rate as for state employees under section
9 33.095, RSMo.

10 3. The area agency on aging may encourage passengers under the program
11 to reimburse the agency for all or part of the cost of providing such transportation
12 services.

13 4. Any volunteer seeking a mileage allowance or reimbursement shall
14 submit a monthly report to the agency detailing the transportation services
15 provided, the dates of such services, and the miles driven. The agency may
16 request further information from the volunteer on the monthly report.

17 5. Subject to appropriations, each area agency on aging may request
18 funding of up to one thousand dollars annually per county for each county within
19 the agency's jurisdiction from the department of health and senior services to
20 assist with the costs associated with administering this program.

21 6. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

22 (1) Any new program authorized under this section shall automatically
23 sunset six years after August 28, 2007, unless reauthorized by an act of the
24 general assembly; and

25 (2) If such program is reauthorized, the program authorized under this
26 section shall automatically sunset twelve years after the effective date of the
27 reauthorization of this section; and

28 (3) This section shall terminate on September first of the calendar year
29 immediately following the calendar year in which a program authorized under
30 this section is sunset.

[660.062.] **192.2025.** 1. There is hereby created a "State Board of Senior
2 Services" which shall consist of seven members, who shall be appointed by the
3 governor, by and with the advice and consent of the senate. No member of the
4 state board of senior services shall hold any other office or employment under the
5 state of Missouri other than in a consulting status relevant to the member's
6 professional status, licensure or designation. Not more than four of the members
7 of the state board of senior services shall be from the same political party.

8 2. Each member shall be appointed for a term of four years; except that
9 of the members first appointed, two shall be appointed for a term of one year, two
10 for a term of two years, two for a term of three years and one for a term of four
11 years. The successors of each shall be appointed for full terms of four years. No
12 person may serve on the state board of senior services for more than two

13 terms. The terms of all members shall continue until their successors have been
14 duly appointed and qualified. One of the persons appointed to the state board of
15 senior services shall be a person currently working in the field of
16 gerontology. One of the persons appointed to the state board of senior services
17 shall be a physician with expertise in geriatrics. One of the persons appointed
18 to the state board of senior services shall be a person with expertise in
19 nutrition. One of the persons appointed to the state board of senior services shall
20 be a person with expertise in rehabilitation services of persons with
21 disabilities. One of the persons appointed to the state board of senior services
22 shall be a person with expertise in mental health issues. In making the two
23 remaining appointments, the governor shall give consideration to individuals
24 having a special interest in gerontology or disability-related issues, including
25 senior citizens. Four of the seven members appointed to the state board of senior
26 services shall be members of the governor's advisory council on aging. If a
27 vacancy occurs in the appointed membership, the governor may appoint a member
28 for the remaining portion of the unexpired term created by the vacancy. The
29 members shall receive actual and necessary expenses plus twenty-five dollars per
30 day for each day of actual attendance.

31 3. The board shall elect from among its membership a chairman and a
32 vice chairman, who shall act as chairman in his or her absence. The board shall
33 meet at the call of the chairman. The chairman may call meetings at such times
34 as he or she deems advisable, and shall call a meeting when requested to do so
35 by three or more members of the board.

36 4. The state board of senior services shall advise the department of health
37 and senior services in the:

38 (1) Promulgation of rules and regulations by the department of health and
39 senior services;

40 (2) Formulation of the budget for the department of health and senior
41 services; and

42 (3) Planning for and operation of the department of health and senior
43 services.

[660.067.] **192.2030.** As used in sections [660.067 to 660.070] **192.2030**
2 **to 192.2035**, the following terms shall mean:

3 (1) "Adult day care", a group program that emphasizes appropriate
4 services for persons eighteen years of age or older [having Alzheimer's disease
5 and related disorders] **who have functional impairments** and that provides

6 services for periods of less than twenty-four hours but more than two hours per
7 day in a place other than the adult's home;

8 (2) "Alzheimer's disease and related disorders", diseases resulting from
9 significant destruction of brain tissue and characterized by a decline of memory
10 and other intellectual functions. These diseases include but are not limited to
11 progressive, degenerative and dementing illnesses such as presenile and senile
12 dementias, Alzheimer's disease and other related disorders;

13 (3) "Appropriate services", services that emphasize surveillance, safety,
14 behavior management and other techniques used to assist persons having
15 Alzheimer's disease and related disorders;

16 (4) "Director", the director [of the division of aging] of the department of
17 [social] **health and senior services, or director's designee;**

18 (5) ["Division", the division of aging of the department of social services;

19 (6)] "In-home companion", someone trained to provide appropriate services
20 to persons having Alzheimer's disease and related disorders and who provides
21 those services in the home;

22 [(7)] (6) "Respite care", a program that provides temporary and
23 short-term residential care, sustenance, supervision and other appropriate
24 services for persons having Alzheimer's disease and related disorders who
25 otherwise reside in their own or in a family home.

[660.069.] **192.2033.** 1. To encourage development of appropriate
2 services for persons having Alzheimer's disease and related disorders, the
3 [division] **department** may make grants to public and private entities for pilot
4 projects from funds specifically appropriated for this purpose. Pilot projects shall
5 have the following goals:

6 (1) To prevent or postpone institutionalization of persons having
7 Alzheimer's disease and related disorders who currently live in their own home
8 or in a family home;

9 (2) To offer services that emphasize safety, surveillance and behavior
10 management rather than, or in addition to, medical treatment, homemaker, chore
11 or personal care services;

12 (3) To temporarily relieve family members or others who have assumed
13 direct care responsibilities by offering services that allow care givers to leave the
14 home. These services shall include but not be limited to adult day care, in-home
15 companions and respite care;

16 (4) To test the practical and economic feasibility of providing services in

17 settings and at levels designed for varying needs; and

18 (5) To develop program models that can be adapted and operated by other
19 public and private entities.

20 2. The director, in accordance with chapter 536, RSMo, shall promulgate
21 rules that establish procedures for grant application, review, selection, monitoring
22 and auditing of grants made [pursuant to sections 660.067 to 660.070] **under**
23 **this section and section 192.2035.**

24 3. The grants shall be limited to a duration of one year but may be
25 renewable for one additional year at the director's discretion and if funds are
26 appropriated for this purpose.

[660.070.] **192.2035.** The commissioner of administration, in consultation
2 with the director of the [division of aging] **department**, shall promulgate rules
3 that establish procedures for contracting with grantees receiving funds under
4 [sections 660.067 to 660.070] **this section and section 192.2033.** No rule or
5 portion of a rule promulgated under the authority of [sections 660.067 to 660.070]
6 **this section and section 192.2033** shall become effective unless it has been
7 promulgated pursuant to the provisions of section 536.024, RSMo.

[660.099.] **192.2040.** 1. The general assembly may appropriate funds in
2 addition to the amount currently being provided per annum for nutrition services
3 for the elderly. Funds so designated to provide nutrition services for the elderly
4 shall be allocated to the [Missouri division of aging] **department** to be placed on
5 the formula basis and distributed to each area agency on aging throughout the
6 state of Missouri.

7 2. The general assembly may appropriate funds in addition to the amount
8 currently being provided per annum through the Missouri elderly and
9 handicapped transportation program. Funds so designated to provide
10 transportation for the elderly and developmentally disabled shall be allocated to
11 the [Missouri division of aging] **department** to be placed on the formula basis
12 and distributed to each area agency on aging throughout the state of Missouri.

13 3. The general assembly may appropriate funds in addition to the amount
14 currently being provided per annum for home-delivered meals for the
15 elderly. Such additional funds shall be allocated to the [Missouri division of
16 aging] **department** to be placed on the formula basis and distributed to each
17 area agency on aging throughout the state of Missouri.

[660.250.] **192.2100.** As used in sections [660.250 to 660.321] **192.2100**
2 **to 192.2130 and sections 192.2175 to 192.2187**, the following terms mean:

- 3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm
4 including financial exploitation by any person, firm or corporation;
- 5 (2) "Court", the circuit court;
- 6 (3) "Department", the department of health and senior services;
- 7 (4) "Director", director of the department of health and senior services or
8 his or her designees;
- 9 (5) "Eligible adult", a person sixty years of age or older who is unable to
10 protect his or her own interests or adequately perform or obtain services which
11 are necessary to meet his or her essential human needs or an adult with a
12 disability, as defined in section [660.053] **192.2003**, between the ages of eighteen
13 and fifty-nine who is unable to protect his or her own interests or adequately
14 perform or obtain services which are necessary to meet his or her essential
15 human needs;
- 16 (6) "Home health agency", the same meaning as such term is defined in
17 section 197.400, RSMo;
- 18 (7) "Home health agency employee", a person employed by a home health
19 agency;
- 20 (8) "Home health patient", an eligible adult who is receiving services
21 through any home health agency;
- 22 (9) "In-home services client", an eligible adult who is receiving services in
23 his or her private residence through any in-home services provider agency;
- 24 (10) "In-home services employee", a person employed by an in-home
25 services provider agency;
- 26 (11) "In-home services provider agency", a business entity under contract
27 with the department or with a [Medicaid] **MO HealthNet** participation
28 agreement, which employs persons to deliver any kind of services provided for
29 eligible adults in their private homes;
- 30 (12) "Least restrictive environment", a physical setting where protective
31 services for the eligible adult and accommodation is provided in a manner no
32 more restrictive of an individual's personal liberty and no more intrusive than
33 necessary to achieve care and treatment objectives;
- 34 (13) "Likelihood of serious physical harm", one or more of the following:
- 35 (a) A substantial risk that physical harm to an eligible adult will occur
36 because of his or her failure or inability to provide for his or her essential human
37 needs as evidenced by acts or behavior which has caused such harm or which
38 gives another person probable cause to believe that the eligible adult will sustain

39 such harm;

40 (b) A substantial risk that physical harm will be inflicted by an eligible
41 adult upon himself or herself, as evidenced by recent credible threats, acts, or
42 behavior which has caused such harm or which places another person in
43 reasonable fear that the eligible adult will sustain such harm;

44 (c) A substantial risk that physical harm will be inflicted by another upon
45 an eligible adult as evidenced by recent acts or behavior which has caused such
46 harm or which gives another person probable cause to believe the eligible adult
47 will sustain such harm;

48 (d) A substantial risk that further physical harm will occur to an eligible
49 adult who has suffered physical injury, neglect, sexual or emotional abuse, or
50 other maltreatment or wasting of his or her financial resources by another
51 person;

52 (14) "Neglect", the failure to provide services to an eligible adult by any
53 person, firm or corporation with a legal or contractual duty to do so, when such
54 failure presents either an imminent danger to the health, safety, or welfare of the
55 client or a substantial probability that death or serious physical harm would
56 result;

57 (15) "Protective services", services provided by the state or other
58 governmental or private organizations or individuals [which are necessary for the
59 eligible adult to meet his or her essential human needs] **to ensure the safety
60 and well being of elderly persons or adults with disabilities who are in
61 danger of being mistreated or neglected, and are unable to take care of
62 themselves or protect themselves from harm.**

[660.255.] **192.2103.** 1. Any person having reasonable cause to suspect
2 that an eligible adult presents a likelihood of suffering serious physical harm and
3 is in need of protective services shall report such information to the department.

4 2. The report shall be made orally or in writing. It shall include, if
5 known:

6 (1) The name, age, and address of the eligible adult;

7 (2) The name and address of any person responsible for the eligible adult's
8 care;

9 (3) The nature and extent of the eligible adult's condition; and

10 (4) Other relevant information.

11 3. Reports regarding persons determined not to be eligible adults as
12 defined in section [660.250] **192.2100** shall be referred to the appropriate state

13 or local authorities.

14 4. The department shall maintain a statewide toll free phone number for
15 receipt of reports.

16 **5. Any person complying with this section in the making of a**
17 **report or in cooperating with the department in any of its activities**
18 **under sections 192.2100 to 192.2130 shall be immune from any civil or**
19 **criminal liability for making such a report or in cooperating with the**
20 **department, unless such person acted negligently, recklessly, in bad**
21 **faith, or with malicious purpose. Any person who purposely files a**
22 **false report of elder abuse or neglect is guilty of a crime under sections**
23 **565.186 and 565.188, RSMo.**

[660.260.] **192.2106.** 1. Upon receipt of a report, the department shall
2 make a prompt and thorough investigation to determine whether or not an
3 eligible adult is facing a likelihood of serious physical harm and is in need of
4 protective services. The department shall provide for any of the following:

5 (1) Identification of the eligible adult and determination that the eligible
6 adult is eligible for services;

7 (2) Evaluation and diagnosis of the needs of eligible adults;

8 (3) Provision of social casework, counseling or referral to the appropriate
9 local or state authority;

10 (4) Assistance in locating and receiving alternative living arrangements
11 as necessary;

12 (5) Assistance in locating and receiving necessary protective services; or

13 (6) The coordination and cooperation with other state agencies and public
14 and private agencies in exchange of information and the avoidance of duplication
15 of services.

[660.261.] **2.** Upon receipt of a report that an eligible adult between the
2 ages of eighteen and fifty-nine is facing a likelihood of serious physical harm, the
3 department shall:

4 (1) Investigate or refer the report to appropriate law enforcement or state
5 agencies; and

6 (2) Provide services or refer to local community or state agencies.

[660.263.] **192.2109.** 1. Reports made pursuant to sections [660.250 to
2 660.295] **192.2100 to 192.2130** shall be confidential and shall not be deemed a
3 public record and shall not be subject to the provisions of section 109.180, RSMo,
4 or chapter 610, RSMo.

5 2. Such reports shall be accessible for examination and copying only to the
6 following persons or offices, or to their designees:

7 (1) The department or any person or agency designated by the
8 department;

9 (2) The attorney general;

10 (3) The department of mental health for persons referred to that
11 department;

12 (4) Any appropriate law enforcement agency; and

13 (5) The eligible adult or [his] **the eligible adult's** legal guardian.

14 3. The name of the reporter shall not be disclosed unless:

15 (1) Such reporter specifically authorizes disclosure of [his] **the reporter's**
16 name; and

17 (2) The department determines that disclosure of the name of the reporter
18 is necessary in order to prevent further harm to an eligible adult.

19 4. Any person who violates the provisions of this section, or who permits
20 or encourages the unauthorized dissemination of information contained in the
21 central registry and in reports and records made pursuant to sections [660.250
22 to 660.295] **192.2100 to 192.2130**, shall be guilty of a class A misdemeanor.

23 5. The department shall maintain a central registry capable of receiving
24 and maintaining reports received in a manner that facilitates rapid access and
25 recall of the information reported, and of subsequent investigations and other
26 relevant information. The department shall electronically record any telephone
27 report of suspected abuse and neglect received by the department and such
28 recorded reports shall be retained by the department for a period of one year after
29 recording.

30 6. Although reports to the central registry may be made anonymously, the
31 department shall in all cases, after obtaining relevant information regarding the
32 alleged abuse or neglect, attempt to obtain the name and address of any person
33 making a report.

 [660.265.] **192.2112.** When an eligible adult gives consent to receive
2 protective services, the department shall assist the adult in locating and
3 arranging for necessary services in the least restrictive environment reasonably
4 available.

 [660.270.] **192.2115.** When the department receives a report that there
2 has been abuse or neglect, or that there otherwise is a likelihood of serious
3 physical harm to an eligible adult and that he or she is in need of protective

4 services and the department is unable to conduct an investigation because access
5 to the eligible adult is barred by any person, the director may petition the
6 appropriate court for a warrant or other order to enter upon the described
7 premises and investigate the report or to produce the information. The
8 application for the warrant or order shall identify the eligible adult and the facts
9 and circumstances which require the issuance of the warrant or order. The
10 director may also seek an order to enjoin the person from barring access to an
11 eligible adult or from interfering with the investigation. If the court finds that,
12 based on the report and relevant circumstances and facts, probable cause exists
13 showing that the eligible adult faces abuse or neglect, or otherwise faces a
14 likelihood of serious physical harm and is in need of protective services and the
15 director has been prevented by another person from investigating the report, the
16 court may issue the warrant or enjoin the interference with the investigation or
17 both.

[660.275.] **192.2118.** If an eligible adult gives consent to receive
2 protective services and any other person interferes with or prevents the delivery
3 of such services, the director may petition the appropriate court for an order to
4 enjoin the interference with the delivery of the services. The petition shall allege
5 the consent of the eligible adult and shall allege specific facts sufficient to show
6 that the eligible adult faces a likelihood of serious physical harm and is in need
7 of the protective services and that delivery is barred by the person named in the
8 petition. If the court finds upon a preponderance of evidence that the allegations
9 in the petition are true, the court may issue an order enjoining the interference
10 with the delivery of the protective services and may establish such conditions and
11 restrictions on the delivery as the court deems necessary and proper under the
12 circumstances.

[660.280.] **192.2121.** When an eligible adult facing the likelihood of
2 serious physical harm and in need of protective services is unable to give consent
3 because of incapacity or legal disability and the guardian of the eligible adult
4 refuses to provide the necessary services or allow the provision of such services,
5 the director shall inform the court having supervisory jurisdiction over the
6 guardian of the facts showing that the eligible adult faces the likelihood of serious
7 physical harm and is in need of protective services and that the guardian refuses
8 to provide the necessary services or allow the provision of such services under the
9 provisions of sections [660.250 to 660.295] **192.2100 to 192.2130.** Upon receipt
10 of such information, the court may take such action as it deems necessary and

11 proper to insure that the eligible adult is able to meet his essential human needs.

[660.285.] **192.2124.** 1. If the director determines after an investigation
2 that an eligible adult is unable to give consent to receive protective services and
3 presents a likelihood of serious physical harm, the director may initiate
4 proceedings pursuant to chapter 202, RSMo, or chapter 475, RSMo, if appropriate.

5 2. In order to expedite adult guardianship and conservatorship cases, the
6 department may retain, within existing funding sources of the department, legal
7 counsel on a case-by-case basis.

[660.290.] **192.2127.** 1. When a peace officer has probable cause to
2 believe that an eligible adult will suffer an imminent likelihood of serious
3 physical harm if not immediately placed in a medical facility for care and
4 treatment, that the adult is incapable of giving consent, and that it is not possible
5 to follow the procedures in section [660.285] **192.2124**, the officer may transport,
6 or arrange transportation for, the eligible adult to an appropriate medical facility
7 which may admit the eligible adult and shall notify the next of kin, if known, and
8 the director.

9 2. Where access to the eligible adult is barred and a substantial likelihood
10 exists of serious physical harm resulting to the eligible adult if he is not
11 immediately afforded protective services, the peace officer may apply to the
12 appropriate court for a warrant to enter upon the described premises and remove
13 the eligible adult. The application for the warrant shall identify the eligible adult
14 and the circumstances and facts which require the issuance of the warrant.

15 3. If immediately upon admission to a medical facility, a person who is
16 legally authorized to give consent for the provision of medical treatment for the
17 eligible adult, has not given or refused to give such consent, and it is the opinion
18 of the medical staff of the facility that treatment is necessary to prevent serious
19 physical harm, the director or the head of the medical facility shall file a petition
20 in the appropriate court for an order authorizing specific medical treatment. The
21 court shall hold a hearing and issue its decision forthwith. Notwithstanding the
22 above, if a licensed physician designated by the facility for such purpose examines
23 the eligible adult and determines that the treatment is immediately or
24 imminently necessary and any delay occasioned by the hearing provided in this
25 subsection would jeopardize the life of the person affected, the medical facility
26 may treat the eligible adult prior to such court hearing.

27 4. The court shall conduct a hearing pursuant to chapter 475, RSMo,
28 forthwith and, if the court finds the eligible adult incapacitated, it shall appoint

29 a guardian ad litem for the person of the eligible adult to determine the nature
30 and extent of the medical treatment necessary for the benefit of the eligible adult
31 and to supervise the rendition of such treatment. The guardian ad litem shall
32 promptly report the completion of treatment to the court, who shall thereupon
33 conduct a restoration hearing or a hearing to appoint a permanent guardian.

34 5. The medical care under this section may not be rendered in a mental
35 health facility unless authorized pursuant to the civil commitment procedures in
36 chapter 632, RSMo.

37 6. Nothing contained in this section or [in any other section of sections
38 660.250 to 660.295] **sections 192.2100 to 192.2130** shall be construed as
39 requiring physician or medical care or hospitalization of any person who, because
40 of religious faith or conviction, relies on spiritual means or prayer to cure or
41 prevent disease or suffering nor shall any provision of sections [660.250 to
42 660.295] **192.2100 to 192.2130** be construed so as to designate any person as an
43 eligible adult who presents a likelihood of suffering serious physical harm and is
44 in need of protective services solely because such person, because of religious
45 faith or conviction, relies on spiritual means or prayer to cure or prevent disease
46 or suffering.

[660.295.] **192.2130.** If an eligible adult does not consent to the receipt
2 of reasonable and necessary protective services, or if an eligible adult withdraws
3 previously given consent, the protective services shall not be provided or
4 continued; except that, if the director has reasonable cause to believe that the
5 eligible adult lacks the capacity to consent, the director may seek a court order
6 pursuant to the provisions of section [660.285] **192.2124.**

[198.070.] **192.2150.** 1. [When] **As used in sections 192.2150 to**
2 **192.2187, unless the context clearly indicates otherwise, the following**
3 **terms mean:**

4 (1) **"Consumer", a consumer of personal care assistance services**
5 **as defined in section 208.900, RSMo;**

6 (2) **"In-home services client", the same meaning as such term is**
7 **defined in section 192.2100 or a participant in a healthy children and**
8 **youth program who receives in-home care authorized by the**
9 **department in accordance with the provisions of Section 6403 of P.L.**
10 **101-239 and federal regulations promulgated thereunder;**

11 (3) **"Misappropriation", the dishonest conversion of property or**
12 **moneys of a patient, resident, in-home services client, or consumer;**

13 (4) **"Patient", any patient of any entity licensed or certified under**
14 **chapter 197, RSMo;**

15 (5) **"Personal care attendant", a person hired to provide personal**
16 **care assistance services as defined in section 208.900, RSMo;**

17 (6) **"Principal", a provider officer, director, owner, partner, or**
18 **other person with primary management or supervisory responsibilities;**

19 (7) **"Provider", any person or entity who:**

20 (a) **Is licensed or certified as an operator under chapter 197 or**
21 **198, RSMo;**

22 (b) **Provides in-home services under contract with the**
23 **department;**

24 (c) **Employs health care staff for temporary or intermittent**
25 **placement in health care facilities;**

26 (d) **Is a licensed adult day care provider;**

27 (e) **Is a vendor as defined in section 208.900, RSMo; or**

28 (f) **Has a MO HealthNet participation agreement and employs**
29 **persons to deliver any kind of services provided for patients, in-home**
30 **services clients, or consumers in their private homes;**

31 (8) **"Resident", any resident of any entity licensed or certified**
32 **under chapter 198, RSMo, or a client of any adult day care provider, as**
33 **defined in section 192.2220.**

34 2. Any adult day care worker; chiropractor; Christian Science practitioner;
35 coroner; dentist; embalmer; employee of the departments of social services,
36 mental health, or health and senior services; employee of a local area agency on
37 aging or an organized area agency on aging program; funeral director; home
38 health agency or home health agency employee; hospital and clinic personnel
39 engaged in examination, care, or treatment of persons; in-home services owner,
40 provider, operator, or employee; law enforcement officer; long-term care facility
41 administrator or employee; medical examiner; medical resident or intern; mental
42 health professional; minister; nurse; nurse practitioner; optometrist; other health
43 practitioner; peace officer; pharmacist; physical therapist; physician; physician's
44 assistant; podiatrist; probation or parole officer; psychologist; social worker;
45 **personal care attendant as defined in section 208.900, RSMo; owner,**
46 **operator, or employee of a vendor as defined in section 208.900, RSMo;**
47 **or other person charged with the care of or caring for a person sixty years of**
48 **age or older or an eligible adult, as defined in section 192.2100, who has**

49 reasonable cause to believe that a [resident of a facility] **patient, resident, in-**
50 **home services client, or consumer** has been abused or neglected, [he or she]
51 **that misappropriation of property or moneys belonging to a patient,**
52 **resident, in-home services client, or consumer has occurred, or that the**
53 **falsification of any documents verifying service delivery of in-home**
54 **services or consumer-directed services has occurred** shall [immediately]
55 report or cause a report to be made to the department **within twenty-four**
56 **hours after the act or discovery of the act by such person, whichever**
57 **is later.**

58 [2.] **3. In addition to those persons required to report under**
59 **subsection 2 of this section, any other person having reasonable cause**
60 **to believe that a patient, resident, in-home services client, or consumer**
61 **has been abused or neglected, that misappropriation of property or**
62 **moneys belonging to a patient, resident, in-home services client, or**
63 **consumer has occurred, or that falsification of any documents verifying**
64 **service delivery of in-home services or consumer-directed services has**
65 **occurred may report such information to the department.**

66 **4. If a report is made by the patient's, in-home services client's,**
67 **consumer's, or resident's physician, the department shall provide**
68 **information regarding the progress of the investigation to the**
69 **physician upon request.**

70 **5. The report shall contain:**

71 **(1) The name and address of the [facility, the name of the resident,]**
72 **provider and the patient, resident, in-home services client, or**
73 **consumer;**

74 **(2) Information regarding the nature of the abuse or neglect,**
75 **misappropriation, or falsification of documents verifying service**
76 **delivery;**

77 **(3) The name of the complainant[.]; and**

78 **(4) Any other information which might be helpful in an investigation**
79 **including the alleged perpetrator or perpetrators, if known.**

80 **[3. Any person required in subsection 1 of this section to report or cause**
81 **a report to be made to the department who knowingly fails to make a report**
82 **within a reasonable time after the act of abuse or neglect as required in this**
83 **subsection is guilty of a class A misdemeanor.**

84 **4. In addition to the penalties imposed by this section, any administrator**

85 who knowingly conceals any act of abuse or neglect resulting in death or serious
86 physical injury, as defined in section 565.002, RSMo, is guilty of a class D felony.

87 5. In addition to those persons required to report pursuant to subsection
88 1 of this section, any other person having reasonable cause to believe that a
89 resident has been abused or neglected may report such information to the
90 department.]

91 6. Upon receipt of a report **that indicates an imminent danger to the**
92 **health, safety, or welfare of a patient, resident, in-home services client,**
93 **or consumer, or substantial probability that death or serious physical**
94 **injury will result,** the department shall [initiate an investigation within
95 twenty-four hours and] **make a prompt and thorough investigation. The**
96 **department shall initiate all other investigations as soon as practicable.**
97 **As provided in section 565.186, RSMo, substantiated reports of elder**
98 **abuse shall be promptly reported by the department to the appropriate**
99 **law enforcement agency and prosecutor. In the case of investigations**
100 **alleging abuse, neglect, misappropriation, or exploitation of a resident**
101 **of a facility licensed under chapter 198, RSMo, by a facility employee**
102 **or other resident:**

103 (1) **If the resident has been appointed a guardian or conservator,**
104 **or both, under chapter 475, RSMo, or if the resident has been certified**
105 **to be incapacitated in accordance with sections 404.800 to 404.872,**
106 **RSMo, the department,** as soon as possible during the course of the
107 investigation, shall notify the resident's [next of kin or responsible party] **legal**
108 **representative** of the report [and], the investigation, and [further notify them]
109 whether the report was substantiated or unsubstantiated unless such person is
110 the alleged perpetrator [of the abuse or neglect];

111 (2) **The department may notify family members, guardians, or**
112 **conservators of the results of investigations in accordance with section**
113 **198.532, RSMo.**

114 [As provided in section 565.186, RSMo, substantiated reports of elder abuse shall
115 be promptly reported by the department to the appropriate law enforcement
116 agency and prosecutor.]

117 7. If the investigation indicates possible abuse or neglect [of a resident],
118 **misappropriation of property or moneys, or falsification of documents**
119 **verifying service delivery of in-home services or consumer-directed**
120 **services,** the investigator shall refer the complaint together with the

investigator's report to the department director or the director's designee for appropriate action. **When information gained from an investigation indicates a crime has occurred, the department shall report such information to the appropriate law enforcement agency.**

8. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate [removal] **action** is necessary to protect the resident, **patient, in-home services client, or consumer, or his or her assets**, from abuse or neglect, **or misappropriation of property or moneys**, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident, **patient, in-home services client, or consumer, or his or her assets**, in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, **patient, in-home services client, or consumer, or his or her assets** for a period not to exceed thirty days.

[8.] 9. Reports shall be confidential, [as provided pursuant to section 660.320, RSMo] **shall not be deemed a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:**

(1) **The complainant, patient, resident, in-home services client, or consumer mentioned, or such person's legal representative agrees to disclosure of his or her name;**

(2) **The department determines that disclosure is necessary to prevent further abuse or neglect, misappropriation of property or moneys, or falsification of any documents verifying service delivery of in-home services or consumer-directed services;**

(3) **Release of a name is required for compliance with a lawful subpoena; except that, the name of the complainant or reporter shall only be required after a court of competent jurisdiction determines that it is necessary to avoid substantial and irreversible prejudice to the party requesting the name of the complainant or reporter;**

(4) **Release of a name is required in connection with a review by the administrative hearing commission in accordance with section**

157 **192.2187 or section 198.039, RSMo;**

158 **(5) The department determines that release of a name is**
159 **appropriate when forwarding a report of findings of an investigation**
160 **to a licensing authority; or**

161 **(6) Release of a name is requested by the department of social**
162 **services for the purpose of licensure under chapter 210, RSMo.**

163 **10. Within five working days after a report required to be made**
164 **under this section is received, the person making the report shall be**
165 **notified of its receipt and the initiation of the investigation.**

166 **[9.] 11. Anyone, except any person who has abused or neglected a**
167 **resident [in a facility], patient, in-home services client, or consumer, or**
168 **who has benefited from the misappropriation of property or moneys of**
169 **a patient, resident, in-home services client, or consumer, or who has**
170 **falsified documents verifying service delivery of in-home services or**
171 **consumer-directed services, who makes a report pursuant to this section or**
172 **who testifies in any administrative or judicial proceeding arising from the report,**
173 **or who cooperates with the department in any activities under this**
174 **section shall be immune from any civil or criminal liability for making such a**
175 **report or for testifying except for liability for perjury, unless such person acted**
176 **negligently, recklessly, in bad faith or with malicious purpose. It is a crime**
177 **pursuant to section 565.186 and 565.188, RSMo, for any person to purposely file**
178 **a false report of elder abuse or neglect.**

179 **[10. Within five working days after a report required to be made pursuant**
180 **to this section is received, the person making the report shall be notified in**
181 **writing of its receipt and of the initiation of the investigation.**

182 **11. No person who directs or exercises any authority in a facility shall**
183 **evict, harass, dismiss or retaliate against a resident or employee because such**
184 **resident or employee or any member of such resident's or employee's family has**
185 **made a report of any violation or suspected violation of laws, ordinances or**
186 **regulations applying to the facility which the resident, the resident's family or an**
187 **employee has reasonable cause to believe has been committed or has**
188 **occurred. Through the existing department information and referral telephone**
189 **contact line, residents, their families and employees of a facility shall be able to**
190 **obtain information about their rights, protections and options in cases of eviction,**
191 **harassment, dismissal or retaliation due to a report being made pursuant to this**
192 **section.**

193 12. Any person who abuses or neglects a resident of a facility is subject
194 to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo.

195 13.] **12.** The department shall maintain the employee disqualification list
196 and place on the employee disqualification list the names of any persons who are
197 or have been employed [in any facility] **by any provider or consumer** and who
198 have been finally determined by the department pursuant to section [660.315,
199 RSMo,] **192.2175:**

200 **(1)** To have **purposely**, knowingly, or recklessly abused or neglected a
201 resident, **patient, in-home services client, or consumer**. For purposes of
202 this section only, **"abuse" and "neglect" shall have the same meaning as**
203 **such terms are defined in section 192.2100, and "purposely", "knowingly"**
204 **and "recklessly" shall have the meanings [that are ascribed to them in this**
205 **section. A person acts "knowingly" with respect to the person's conduct when a**
206 **reasonable person should be aware of the result caused by his or her conduct. A**
207 **person acts "recklessly" when the person consciously disregards a substantial and**
208 **unjustifiable risk that the person's conduct will result in serious physical injury**
209 **and such disregard constitutes a gross deviation from the standard of care that**
210 **a reasonable person would exercise in the situation] as such terms are defined**
211 **in chapter 562, RSMo;**

212 **(2)** To have falsified documents verifying service delivery to an
213 **in-home services client, or consumer;**

214 **(3)** To have misappropriated property or moneys belonging to a
215 **patient, resident, in-home services client, or consumer.**

216 **13.** No person who directs or exercises any authority on behalf
217 of a provider and no personal care attendant, as defined in section
218 208.900, RSMo, shall evict, harass, dismiss, or retaliate against a
219 patient, resident, in-home services client, consumer, or employee
220 because such patient, resident, in-home services client, consumer, or
221 employee, or any member of such patient's, resident's, in-home services
222 client's, consumer's, or employee's family has made a report of any
223 violation or suspected violation of laws, standards, or regulations
224 applying to the provider or attendant which the complainant has
225 reasonable cause to believe has been committed or has
226 occurred. Through existing department information and referral
227 telephone contact line, patients, residents, in-home services clients,
228 consumers, their families, and employees of a provider may obtain

229 information regarding their rights, protections, and options in cases of
230 eviction, harassment, dismissal, or retaliation due to a report being
231 made under this section.

232 14. In the case of investigations involving facilities licensed
233 under chapter 198, RSMo, the timely self-reporting of incidents to the central
234 registry by a facility shall continue to be investigated in accordance with
235 department policy, and shall not be counted or reported by the department as a
236 hot-line call but rather a self-reported incident. If the self-reported incident
237 results in a regulatory violation, such incident shall be reported as a
238 substantiated report.

239 15. Any potential consumer or in-home services client whose
240 services are funded by MO HealthNet shall be screened to ascertain if
241 they are included on the Missouri sexual offender registry maintained
242 by the Missouri state highway patrol. If any potential consumer or in-
243 home services client whose services are funded by MO HealthNet is
244 listed on the Missouri sexual offender registry, the department shall
245 notify the provider at the time of the referral.

192.2153. 1. Any person required to report or cause a report to
2 be made to the department under subsection 2 of section 192.2150 who
3 fails to make such a report or who causes such a report not to be made
4 of abuse or neglect, misappropriation of property or moneys, or
5 falsification of documents verifying service delivery of in-home services
6 or consumer-directed services within twenty-four hours after the act or
7 discovery of the act by such person, whichever is later, is guilty of a
8 class A misdemeanor.

9 2. Any person who abuses or neglects an in-home services client,
10 patient, resident, or consumer is subject to criminal prosecution under
11 section 565.180, 565.182, or 565.184, RSMo. Any person who puts to his
12 or her own use or the use of the provider, or otherwise diverts from the
13 in-home services client's, patient's, resident's or consumer's use of any
14 personal property or moneys of the in-home services client, patient,
15 resident or consumer, or falsifies any documents verifying service
16 delivery of in-home services or consumer-directed services is guilty of
17 a class A misdemeanor.

18 3. In addition to any other penalties imposed by this section, any
19 provider, principal in the operation of a provider as defined in section
20 192.2150, or employee of a provider who knowingly conceals any act of

21 **abuse or neglect that results in death or serious physical injury, as**
22 **defined in section 565.002, RSMo, is guilty of a class D felony.**

23 **4. If a provider willfully and knowingly fails to report abuse by**
24 **an employee of the provider and such employee is later found guilty or**
25 **pleads guilty to a violation of section 565.180, 565.182, or 565.184, RSMo,**
26 **the provider may be subject to an administrative penalty of one**
27 **thousand dollars per violation to be collected by the department. Any**
28 **moneys collected shall be transferred to the state school moneys fund**
29 **established in section 166.051, RSMo, and distributed to the public**
30 **schools of this state in the manner provided in section 163.031,**
31 **RSMo. Any provider that has an administrative penalty imposed by the**
32 **department may seek an administrative review of the department's**
33 **action under chapter 621, RSMo. Any decision of the administrative**
34 **hearing commission may be appealed to the circuit court in the county**
35 **where the violation occurred for judicial review as a contested case**
36 **under chapter 536, RSMo.**

[660.315.] **192.2175.** 1. After an investigation and a determination has
2 been made to place a person's name on the employee disqualification list, that
3 person shall be notified in writing mailed to his or her last known address that:

4 (1) An allegation has been made against the person, the substance of the
5 allegation and that an investigation has been conducted which tends to
6 substantiate the allegation;

7 (2) The person's name will be included in the employee disqualification
8 list of the department;

9 (3) The consequences of being so listed including the length of time to be
10 listed; and

11 (4) The person's rights and the procedure to challenge the allegation.

12 **2. Notice by mail to the last known address, as provided by the**
13 **person to the person's employer at the time of the allegation, shall**
14 **satisfy the requirements of this section. If the person has provided the**
15 **department with a more recent address, notice shall be sent to the more**
16 **recent address. Notice shall be complete upon such mailing. If no reply**
17 **has been received within thirty days of mailing the notice, the department may**
18 **include the name of such person on its list. The length of time the person's name**
19 **shall appear on the employee disqualification list shall be determined by the**
20 **director or the director's designee, based upon the criteria contained in subsection**

21 9 of this section.

22 3. If the person so notified wishes to challenge the allegation, such person
23 may file an application for a hearing with the department. The department shall
24 grant the application within thirty days after receipt by the department and set
25 the matter for hearing[, or the department shall notify the applicant that, after
26 review, the allegation has been held to be unfounded and the applicant's name
27 will not be listed].

28 4. If a person's name is included on the employee disqualification list
29 without the department providing notice as required under [subsection 1]
30 **subsections 1 and 2** of this section, such person may file a request with the
31 department for removal of the name or for a hearing. Within thirty days after
32 receipt of the request, the department shall either remove the name from the list
33 or grant a hearing and set a date therefor.

34 5. Any hearing shall be conducted [in the county of the person's residence]
35 by the director of the department or the director's designee **in Cole County or**
36 **the county of the person's residence, or by telephone at the discretion**
37 **of the director or the director's designee.** The provisions of chapter 536,
38 RSMo, for a contested case except those provisions or amendments which are in
39 conflict with this section shall apply to and govern the proceedings contained in
40 this section and the rights and duties of the parties involved. The person
41 appealing such an action shall be entitled to present evidence, pursuant to the
42 provisions of chapter 536, RSMo, relevant to the allegations.

43 6. Upon the record made at the hearing, the director of the department
44 or the director's designee shall determine all questions presented and shall
45 determine whether the person shall be listed on the employee disqualification
46 list. The director of the department or the director's designee shall clearly state
47 the reasons for his or her decision and shall include a statement of findings of
48 fact and conclusions of law pertinent to the questions in issue.

49 7. A person aggrieved by the decision following the hearing shall be
50 informed of his or her right to seek judicial review as provided under chapter 536,
51 RSMo. If the person fails to appeal the director's findings, those findings shall
52 constitute a final determination that the person shall be placed on the employee
53 disqualification list.

54 8. A decision by the director shall be inadmissible in any civil action
55 brought against a [facility or the in-home services provider agency] **provider or**
56 **employee of such provider or personal care attendant** and arising out of

57 the facts and circumstances which brought about the employment disqualification
58 proceeding, unless the civil action is brought against the [facility or the in-home
59 services provider agency] **provider or employee of such provider or**
60 **personal care attendant** by the department of health and senior services or
61 one of its divisions.

62 9. The length of time the person's name shall appear on the employee
63 disqualification list shall be determined by the director of the department of
64 health and senior services or the director's designee, based upon the following:

65 (1) Whether the person acted **purposely**, recklessly, or knowingly, as
66 defined in chapter 562, RSMo;

67 (2) The degree of the physical, sexual, or emotional injury or harm; or the
68 degree of the imminent danger to the health, safety or welfare of [a resident or
69 in-home services client] **the alleged victim**;

70 (3) The degree of misappropriation of the property or funds, or
71 falsification of any documents for service delivery of [an in-home services client]
72 **a patient, resident, in-home services client, or consumer**;

73 (4) Whether the person has previously been listed on the employee
74 disqualification list;

75 (5) Any mitigating circumstances;

76 (6) Any aggravating circumstances; and

77 (7) Whether alternative sanctions resulting in conditions of continued
78 employment are appropriate in lieu of placing a person's name on the employee
79 disqualification list. Such conditions of employment may include, but are not
80 limited to, additional training and employee counseling. Conditional employment
81 shall terminate upon the expiration of the designated length of time and the
82 person's submitting documentation which fulfills the department of health and
83 senior services' requirements.

84 10. The removal of any person's name from the list under this section
85 shall not prevent the director from keeping records of all acts finally determined
86 to have occurred under this section.

87 11. The department shall [provide] **make available** the list maintained
88 pursuant to this section to other state departments upon request and to any
89 person, corporation, organization, or association who:

90 (1) Is licensed as an operator under chapter 198, RSMo;

91 (2) Provides in-home services under contract with the department;

92 (3) Employs [nurses and nursing assistants] **health care staff** for

93 temporary or intermittent placement [in health care facilities] **with providers;**

94 (4) Is approved by the department to issue certificates for nursing
95 assistants training;

96 (5) Is an entity licensed under chapter 197, RSMo; or

97 (6) **Is a personal care assistance services vendor agency, as**
98 **defined in section 208.900, RSMo;**

99 (7) **Is an adult day care provider licensed under sections 192.2200**
100 **to 192.2227; or**

101 (8) Is a recognized school of nursing, medicine, or other health profession
102 **that receives the list** for the purpose of [determining whether students
103 scheduled to] **checking its students who** participate in clinical rotations with
104 entities described in [subdivision] **subdivisions (1)[, (2), or (5)] to (7)** of this
105 subsection [are included in the employee disqualification list].

106 The department shall inform any person listed above who inquires of the
107 department whether or not a particular name is on the list. The department may
108 require that the request be made in writing. **No person, corporation, or**
109 **association who is entitled to access the employee disqualification list**
110 **shall disclose the information to any person, corporation, or association**
111 **who is not entitled to access the list. Any person, corporation, or**
112 **association who is entitled to access the employee disqualification list**
113 **who discloses the information to any person, corporation, or**
114 **association who is not entitled to access the list is guilty of an**
115 **infraction.**

116 12. **The department shall, upon request, provide to the division**
117 **of employment security within the department of labor and industrial**
118 **relations copies of the investigative reports related to an employee**
119 **being placed on the employee disqualification list.**

120 13. No person, corporation, organization, or association who received the
121 employee disqualification list under subdivisions (1) to [(5)] **(7)** of subsection 11
122 of this section shall knowingly employ any person who is on the employee
123 disqualification list. **No person who is listed on the employee**
124 **disqualification list shall be paid from public moneys as a personal care**
125 **assistance services attendant.** Any person, corporation, organization, or
126 association who received the employee disqualification list under subdivisions (1)
127 to [(5)] **(7)** of subsection 11 of this section, or any **consumer or** person
128 responsible for providing health care service, who declines to employ or

129 terminates a person whose name is listed in this section shall be immune from
130 suit by that person or anyone else acting for or in behalf of that person for the
131 failure to employ or for the termination of the person whose name is listed on the
132 employee disqualification list.

133 **[13.] 14.** Any employer who is required to discharge an employee because
134 the employee was placed on **[a] the employee** disqualification list maintained
135 by the department of health and senior services after the date of hire shall not
136 be charged for unemployment insurance benefits based on wages paid to the
137 employee for work prior to the date of discharge, pursuant to section 288.100,
138 RSMo.

139 **[14.] 15.** Any person who has been listed on the employee disqualification
140 list may request that the director remove his or her name from the employee
141 disqualification list. The request shall be written and may not be made more
142 than once every twelve months. The request will be granted by the director upon
143 a clear showing, by written submission only, that the person will not commit
144 additional acts of abuse, neglect, misappropriation of the property or funds, or the
145 falsification of any documents **[of] verifying** service delivery to an in-home
146 services client **or consumer**. The director may make conditional the removal of
147 a person's name from the list on any terms that the director deems appropriate,
148 and failure to comply with such terms may result in the person's name being
149 relisted. The director's determination of whether to remove the person's name
150 from the list is not subject to appeal.

[660.317.] 192.2178. 1. For the purposes of this section, the term
2 "provider" **[means any person, corporation or association who:**

- 3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;
4 (2) Provides in-home services under contract with the department;
5 (3) Employs nurses or nursing assistants for temporary or intermittent
6 placement in health care facilities;
7 (4) Is an entity licensed pursuant to chapter 197, RSMo;
8 (5) Is a public or private facility, day program, residential facility or
9 specialized service operated, funded or licensed by the department of mental
10 health; or

11 (6) Is a licensed adult day care provider] **has the same meaning as**
12 **such term is defined in section 192.2150; except that, provider also**
13 **includes a public or private facility, day program, residential facility,**
14 **or specialized service operated, funded, or licensed by the department**

15 **of mental health.**

16 2. For the purpose of this section "patient or resident" has the same
17 meaning as such term is defined in section 43.540, RSMo, **"in-home services**
18 **client" has the same meaning as such term is defined in section**
19 **192.2150, and "consumer" has the same meaning as such term is defined**
20 **in section 208.900, RSMo.**

21 3. Prior to [allowing any person who has been hired as] **hiring a**
22 full-time, part-time or temporary **employee for any** position to have contact
23 with any patient [or], resident, **in-home services client or consumer, or**
24 **finding a personal care attendant eligible to have contact with a**
25 **consumer,** the provider shall[, or] **make an inquiry to the department of**
26 **health and senior services whether the person is listed on the employee**
27 **disqualification list as provided in section 192.2175.** In the case of
28 temporary employees hired through or contracted for an employment agency, the
29 employment agency shall prior to sending a temporary employee to a provider
30 **make an inquiry to the department of health and senior services**
31 **whether the person is listed on the employee disqualification list as**
32 **provided in section 192.2175.**

33 4. Prior to allowing any person who has been hired in a full-time,
34 part-time, or temporary position to have contact with any patient,
35 resident, **in-home services client, or consumer,** the provider shall, or in
36 the case of temporary employees hired through or contracted for an
37 employment agency, the employment agency prior to sending a
38 **temporary employee to a provider shall:**

39 (1) Request a criminal background check as provided in section 43.540,
40 RSMo. Completion of an inquiry to the highway patrol **or family care safety**
41 **registry** for criminal records that are available for disclosure to a provider for
42 the purpose of conducting an employee criminal records background check shall
43 be deemed to fulfill the provider's duty to conduct employee criminal background
44 checks pursuant to this section; except that, completing the inquiries pursuant
45 to this subsection shall not be construed to exempt a provider from further
46 inquiry pursuant to common law requirements governing due diligence. If an
47 applicant has not resided in this state for five consecutive years prior to the date
48 of his or her application for employment, the provider shall request a nationwide
49 check for the purpose of determining if the applicant has a prior criminal history
50 in other states. The fingerprint cards and any required fees shall be sent to the

51 highway patrol's criminal records division. The first set of fingerprints shall be
52 used for searching the state repository of criminal history information. If no
53 identification is made, the second set of fingerprints shall be forwarded to the
54 Federal Bureau of Investigation, Identification Division, for the searching of the
55 federal criminal history files. The patrol shall notify the submitting state agency
56 of any criminal history information or lack of criminal history information
57 discovered on the individual. The provisions relating to applicants for
58 employment who have not resided in this state for five consecutive years shall
59 apply only to persons who have no employment history with a licensed Missouri
60 facility during that five-year period. Notwithstanding the provisions of section
61 610.120, RSMo, all records related to any criminal history information discovered
62 shall be accessible and available to the provider making the record request; and

63 (2) [Make an inquiry to the department of health and senior services
64 whether the person is listed on the employee disqualification list as provided in
65 section 660.315] **Request of the person a physical address where the**
66 **person may be located in addition to any other address provided by the**
67 **person such as a post office box address; and**

68 (3) **Make an inquiry to the department of mental health to**
69 **determine whether the person is listed on the disqualification registry**
70 **as provided in section 630.170, RSMo.**

71 **5. For any worker registered with the family care safety registry**
72 **as required by sections 210.900 to 210.936, RSMo, a provider may access**
73 **the family care safety registry in lieu of the requirements in**
74 **subsections 3 and 4 of this section.**

75 [4.] **6.** When the provider requests a criminal background check pursuant
76 to section 43.540, RSMo, the requesting entity may require that the applicant
77 reimburse the provider for the cost of such record check. When a provider
78 requests a nationwide criminal background check pursuant to subdivision (1) of
79 subsection [3] 4 of this section, the total cost to the provider of any background
80 check required pursuant to this section shall not exceed five dollars which shall
81 be paid to the state. State funding and the obligation of a provider to obtain a
82 nationwide criminal background check shall be subject to the availability of
83 appropriations.

84 [5.] **7.** An applicant for a position to have contact with patients, **in-home**
85 **services clients, consumers,** or residents of a provider shall:

86 (1) Sign a consent form as required by section 43.540, RSMo, so the

87 provider may request a criminal records review;

88 (2) Disclose the applicant's criminal history. For the purposes of this
89 subdivision "criminal history" includes any conviction or a plea of guilty **or nolo**
90 **contendere** to a misdemeanor or felony charge **in this state or any other**
91 **state** and shall include any suspended imposition of sentence, any suspended
92 execution of sentence or any period of probation or parole; and

93 (3) Disclose if the applicant is listed on the employee disqualification list
94 as provided in section [660.315] **192.2175, and disclose whether the**
95 **applicant is a registered sexual offender under section 589.400, RSMo,**
96 **listed in the Missouri uniform law enforcement system (MULES).**

97 [6.] 8. An applicant who knowingly fails to disclose his or her criminal
98 history as required in subsection [5] **7** of this section is guilty of a class A
99 misdemeanor. A provider is guilty of a class A misdemeanor if the provider
100 knowingly hires or retains a person to have contact with patients, **in-home**
101 **services clients, consumers,** or residents and the person has been convicted
102 of, pled guilty to or nolo contendere in this state or any other state or has been
103 found guilty of a crime, which if committed in Missouri would be a class A or B
104 felony violation of chapter **195, 565, 566, 568, or 569, RSMo,** [or any violation of
105 subsection 3 of section 198.070, RSMo, or section 568.020, RSMo] **a violation of**
106 **section 570.090, RSMo, a felony violation or three or more misdemeanor**
107 **violations of section 570.030, RSMo, a violation of section 570.145,**
108 **RSMo, or any violation of subsection 1 of section 192.2153. For any**
109 **person hired on or after August 28, 2008, a provider shall not hire any**
110 **person with a disqualifying criminal history unless such person has**
111 **first obtained a good cause waiver of the disqualifying criminal**
112 **history. For any person employed as of August 28, 2008, a provider**
113 **shall request a criminal background check as provided in section**
114 **43.540, RSMo, by January 1, 2009, and shall not knowingly retain any**
115 **such person with a disqualifying criminal history after March 1, 2009,**
116 **unless such person has submitted a completed good cause waiver**
117 **application prior to March 1, 2009. If the good cause waiver is denied,**
118 **the provider shall not continue to retain such person after the provider**
119 **is notified of the denial of the good cause waiver.**

120 9. For any persons hired on or after August 28, 2008, a provider
121 is guilty of a class A misdemeanor if the provider knowingly hires or
122 retains any person who is a registered sex offender under section

123 **589.400, RSMo, and whose name appears on the sexual offender**
124 **registry, or who has been convicted of an offense which would require**
125 **registry under section 589.400, RSMo.**

126 [7.] 10. Any in-home services provider agency [or], **consumer-directed**
127 **services vendor**, home health agency [shall be], **or hospice** is guilty of a class
128 A misdemeanor if such **vendor, hospice, or** agency knowingly [employs] **hires**
129 **or retains** a person to provide in-home services, **consumer-directed services,**
130 **hospice services,** or home health services to any in-home services client,
131 **consumer-directed services consumer, hospice patient,** or home health
132 **patient, or determines a personal care attendant eligible to have a**
133 **contract with a consumer,** and such person [either] refuses to register with
134 the family care safety registry [or is listed on any of the background check lists
135 in]. **Any in-home services provider agency, home health agency, or**
136 **hospice is guilty of a class A misdemeanor if such agency or hospice**
137 **allows an employee to have contact with a patient or in-home services**
138 **client prior to requesting a background screening from the family care**
139 **safety registry pursuant to sections 210.900 to [210.937] 210.936, RSMo.**

140 [8.] 11. The highway patrol shall examine whether protocols can be
141 developed to allow a provider to request a statewide fingerprint criminal records
142 review check through local law enforcement agencies.

143 [9.] 12. A provider may use a private investigatory agency rather than
144 the highway patrol to do a criminal history records review check, and
145 alternatively, the applicant pays the private investigatory agency such fees as the
146 provider and such agency shall agree.

147 [10.] 13. Except for the hiring restriction based on the department of
148 health and senior services employee disqualification list established pursuant to
149 section [660.315] **192.2175, and the registration as a sexual offender under**
150 **section 589.400, RSMo,** the department of health and senior services shall
151 promulgate rules and regulations to waive the hiring restrictions pursuant to this
152 section for good cause. For purposes of this section, "good cause" means the
153 department has made a determination by examining [the employee's prior work
154 history and other] relevant factors [that such employee does not present a risk
155 to the health or safety of residents] **as established by rule and determined**
156 **that the hiring restriction contained in subsections 8 and 10 of this**
157 **section is removed and the hiring decision remains the responsibility**
158 **of the provider.**

[660.300.] **192.2181.** 1. [When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; or social worker has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he or she shall immediately report or cause a report to be made to the department. If the report is made by a physician of the in-home services client, the department shall maintain contact with the physician regarding the progress of the investigation.

2.] When a report of deteriorating physical condition resulting in possible abuse or neglect of an in-home services client **or consumer** is received by the department, [the client's case manager and] the department nurse shall be notified. The [client's case manager] **department** shall investigate and immediately report the results of the investigation to the department nurse. The department may authorize [the] **an** in-home services provider nurse to assist [the case manager] with the investigation.

[3.] **2.** If requested, local area agencies on aging shall provide volunteer training to those persons listed in subsection [1 of this section] **2 of section 192.2150** regarding the detection and report of abuse and neglect [pursuant to this section].

[4. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

5. The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, the home health agency, the home health agency employee, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

37 6. In addition to those persons required to report under subsection 1 of
38 this section, any other person having reasonable cause to believe that an in-home
39 services client or home health patient has been abused or neglected by an
40 in-home services employee or home health agency employee may report such
41 information to the department.

42 7. If the investigation indicates possible abuse or neglect of an in-home
43 services client or home health patient, the investigator shall refer the complaint
44 together with his or her report to the department director or his or her designee
45 for appropriate action. If, during the investigation or at its completion, the
46 department has reasonable cause to believe that immediate action is necessary
47 to protect the in-home services client or home health patient from abuse or
48 neglect, the department or the local prosecuting attorney may, or the attorney
49 general upon request of the department shall, file a petition for temporary care
50 and protection of the in-home services client or home health patient in a circuit
51 court of competent jurisdiction. The circuit court in which the petition is filed
52 shall have equitable jurisdiction to issue an ex parte order granting the
53 department authority for the temporary care and protection of the in-home
54 services client or home health patient, for a period not to exceed thirty days.

55 8. Reports shall be confidential, as provided under section 660.320.

56 9. Anyone, except any person who has abused or neglected an in-home
57 services client or home health patient, who makes a report pursuant to this
58 section or who testifies in any administrative or judicial proceeding arising from
59 the report shall be immune from any civil or criminal liability for making such
60 a report or for testifying except for liability for perjury, unless such person acted
61 negligently, recklessly, in bad faith, or with malicious purpose.

62 10. Within five working days after a report required to be made under this
63 section is received, the person making the report shall be notified in writing of
64 its receipt and of the initiation of the investigation.

65 11. No person who directs or exercises any authority in an in-home
66 services provider agency or home health agency shall harass, dismiss or retaliate
67 against an in-home services client or home health patient, or an in-home services
68 employee or a home health agency employee because he or any member of his or
69 her family has made a report of any violation or suspected violation of laws,
70 standards or regulations applying to the in-home services provider agency or
71 home health agency or any in-home services employee or home health agency
72 employee which he has reasonable cause to believe has been committed or has

73 occurred.

74 12. Any person who abuses or neglects an in-home services client or home
75 health patient is subject to criminal prosecution under section 565.180, 565.182,
76 or 565.184, RSMo. If such person is an in-home services employee and has been
77 found guilty by a court, and if the supervising in-home services provider willfully
78 and knowingly failed to report known abuse by such employee to the department,
79 the supervising in-home services provider may be subject to administrative
80 penalties of one thousand dollars per violation to be collected by the department
81 and the money received therefor shall be paid to the director of revenue and
82 deposited in the state treasury to the credit of the general revenue fund. Any
83 in-home services provider which has had administrative penalties imposed by the
84 department or which has had its contract terminated may seek an administrative
85 review of the department's action pursuant to chapter 621, RSMo. Any decision
86 of the administrative hearing commission may be appealed to the circuit court in
87 the county where the violation occurred for a trial de novo. For purposes of this
88 subsection, the term "violation" means a determination of guilt by a court.

89 13.] 3. The department shall establish a quality assurance and
90 supervision process for **in-home services** clients that requires an in-home
91 services provider agency to [conduct random visits to] verify compliance with
92 program standards and verify the accuracy of records kept by an in-home services
93 employee.

94 [14. The department shall maintain the employee disqualification list and
95 place on the employee disqualification list the names of any persons who have
96 been finally determined by the department, pursuant to section 660.315, to have
97 recklessly, knowingly or purposely abused or neglected an in-home services client
98 or home health patient while employed by an in-home services provider agency
99 or home health agency. For purposes of this section only, "knowingly" and
100 "recklessly" shall have the meanings that are ascribed to them in this section. A
101 person acts "knowingly" with respect to the person's conduct when a reasonable
102 person should be aware of the result caused by his or her conduct. A person acts
103 "recklessly" when the person consciously disregards a substantial and
104 unjustifiable risk that the person's conduct will result in serious physical injury
105 and such disregard constitutes a gross deviation from the standard of care that
106 a reasonable person would exercise in the situation.

107 15.] 4. At the time [a] **an in-home services** client has been assessed
108 to determine the level of care as required by rule and is eligible for in-home

109 services, the department shall conduct a "Safe at Home Evaluation" to determine
110 the **in-home services** client's physical, mental, and environmental
111 capacity. The department shall develop the safe at home evaluation tool by rule
112 in accordance with chapter 536, RSMo. The purpose of the safe at home
113 evaluation is to assure that each **in-home services** client has the appropriate
114 level of services and professionals involved in the in-home services client's
115 care. The plan of service or care for each in-home services client shall be
116 authorized by a nurse. The department may authorize the licensed in-home
117 services nurse, in lieu of the department nurse, to conduct the assessment of the
118 in-home services client's condition and to establish a plan of services or care. The
119 department may use the expertise, services, or programs of other departments
120 and agencies on a case-by-case basis to establish the plan of service or care. The
121 department may, as indicated by the safe at home evaluation, refer any **in-home**
122 **services** client to a mental health professional, as defined in 9 CSR 30-4.030, for
123 evaluation and treatment as necessary.

124 [16.] 5. Authorized nurse visits shall occur at least twice annually to
125 assess [the client and the client's plan of services] **each in-home services**
126 **client or consumer and his or her plan of care.** The [provider] nurse shall
127 report the results of his or her visits to the [client's case manager] **department.**
128 If the [provider] nurse believes that the plan of [service] **care** requires alteration,
129 the department shall be notified and the department shall make [a client] **an**
130 evaluation. All authorized nurse visits shall be reimbursed to the in-home
131 services provider. All authorized nurse visits shall be reimbursed outside of the
132 nursing home cap for in-home services clients **or consumers** whose services have
133 reached one hundred percent of the average statewide charge for care and
134 treatment in an intermediate care facility, provided that the services have been
135 preauthorized by the department.

136 [17.] 6. All in-home services clients **and consumers** shall be advised of
137 their rights **and responsibilities** by the department **or the department's**
138 **designee** at the initial evaluation. The rights shall include, but not be limited
139 to, the right to call the department for any reason, including dissatisfaction with
140 the provider or services. The department shall establish a process to receive such
141 nonabuse and neglect calls other than the elder abuse and neglect hotline.

142 [18.] 7. Subject to appropriations, all nurse visits authorized in [sections
143 660.250 to 660.300] **this section and sections 192.2100 to 192.2130** shall be
144 reimbursed to the in-home services provider agency.

[660.321.] **192.2184.** Notwithstanding any other provision of law, the
2 department shall not disclose personally identifiable medical, social, personal, or
3 financial records of any eligible adult being served by the [division of senior
4 services] **department** except when disclosed in a manner that does not identify
5 the eligible adult, or when ordered to do so by a court of competent
6 jurisdiction. Such records shall be accessible without court order for examination
7 and copying only to the following persons or offices, or to their designees:

8 (1) The department or any person or agency designated by the department
9 for such purposes as the department may determine;

10 (2) The attorney general, to perform his or her constitutional or statutory
11 duties;

12 (3) The department of mental health for residents placed through that
13 department, to perform its constitutional or statutory duties;

14 (4) Any appropriate law enforcement agency, to perform its constitutional
15 or statutory duties;

16 (5) The eligible adult, his or her legal guardian or any other person
17 designated by the eligible adult; and

18 (6) The department of social services for individuals who receive
19 [Medicaid] **MO HealthNet** benefits, to perform its constitutional or statutory
20 duties.

[660.310.] **192.2187.** 1. Notwithstanding any other provision of law, if
2 the department of health and senior services proposes to deny, suspend, place on
3 probation, or terminate an in-home services provider agency contract, the
4 department of health and senior services shall serve upon the applicant or
5 contractor written notice of the proposed action to be taken. The notice shall
6 contain a statement of the type of action proposed, the basis for it, the date the
7 action will become effective, and a statement that the applicant or contractor
8 shall have thirty days from the date of mailing or delivery of the notice to file a
9 complaint requesting a hearing before the administrative hearing
10 commission. The administrative hearing commission may consolidate an
11 applicant's or contractor's complaint with any proceeding before the
12 administrative hearing commission filed by such contractor or applicant pursuant
13 to subsection 3 of section 208.156, RSMo, involving a common question of law or
14 fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.120,
15 621.125, 621.135, and 621.145, RSMo, shall apply. With respect to cases in which
16 the department has denied a contract to an in-home services provider agency, the

17 administrative hearing commission shall conduct a hearing to determine the
18 underlying basis for such denial. However, if the administrative hearing
19 commission finds that the contract denial is supported by the facts and the law,
20 the case need not be returned to the department. The administrative hearing
21 commission's decision shall constitute affirmation of the department's contract
22 denial.

23 2. The department of health and senior services may issue letters of
24 censure or warning without formal notice or hearing.

25 3. The administrative hearing commission may stay the suspension or
26 termination of an in-home services provider agency's contract, or the placement
27 of the contractor on probation, pending the commission's findings and
28 determination in the cause, upon such conditions, with or without the agreement
29 of the parties, as the commission deems necessary and appropriate, including the
30 posting of bond or other security except that the commission shall not grant a
31 stay, or if a stay has already been entered shall set aside its stay, unless the
32 commission finds that the contractor has established that servicing the
33 department's clients pending the commission's final determination would not
34 present an imminent danger to the health, safety, or welfare of any client or a
35 substantial probability that death or serious physical harm would result. The
36 commission may remove the stay at any time that it finds that the contractor has
37 violated any of the conditions of the stay. Such stay shall remain in effect, unless
38 earlier removed by the commission, pending the decision of the commission and
39 any subsequent departmental action at which time the stay shall be removed. In
40 any case in which the department has refused to issue a contract, the commission
41 shall have no authority to stay or to require the issuance of a contract pending
42 final determination by the commission.

43 4. Stays granted to contractors by the administrative hearing commission
44 shall, as a condition of the stay, require at a minimum that the contractor under
45 the stay operate under the same contractual requirements and regulations as are
46 in effect, from time to time, as are applicable to all other contractors in the
47 program.

48 5. The administrative hearing commission shall make its final decision
49 based upon the circumstances and conditions as they existed at the time of the
50 action of the department and not based upon circumstances and conditions at the
51 time of the hearing or decision of the commission.

52 6. In any proceeding before the administrative hearing commission

53 pursuant to this section, the burden of proof shall be on the contractor or
54 applicant seeking review.

55 7. Any person, including the department, aggrieved by a final decision of
56 the administrative hearing commission may seek judicial review of such decision
57 as provided in section 621.145, RSMo.

[660.400.] **192.2200.** As used in sections [199.025, RSMo, and 660.403
2 to 660.420] **192.2203 to 192.2227**, unless the context clearly indicates otherwise,
3 the following terms mean:

4 (1) "Adult", an individual over the age of eighteen;

5 (2) "Adult day care program", a group program designed to provide care
6 and supervision to meet the needs of functionally impaired adults for periods of
7 less than twenty-four hours but more than two hours per day in a place other
8 than the adult's own home;

9 (3) "Adult day care provider", the person, corporation, partnership,
10 association or organization legally responsible for the overall operation of the
11 adult day care program;

12 (4) "Department", the department of [social] **health and senior** services;

13 (5) "Director", the director of the [division of aging] **department of**
14 **health and senior services**;

15 (6) ["Division", the division of aging;

16 (7)] "Functionally impaired adult", an adult who by reason of age or
17 infirmity requires care and supervision;

18 [(8)] **(7)** "License", the document issued by the [division] **department**
19 in accordance with the provisions of sections [199.025, RSMo, and 660.403 to
20 660.420] **192.2203 to 192.2227** to an adult day care program which authorizes
21 the adult day care provider to operate the program in accordance with the
22 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
23 **192.2227** and the applicable rules promulgated pursuant thereto;

24 [(9)] **(8)** "Participant", a functionally impaired adult who is enrolled in
25 an adult day care program;

26 [(10)] **(9)** "Person", any individual, firm, corporation, partnership,
27 association, agency, or an incorporated or unincorporated organization regardless
28 of the name used;

29 [(11)] **(10)** "Provisional license", the document issued by the [division]
30 **department** in accordance with the provisions of sections [199.025, RSMo, and
31 660.403 to 660.420] **192.2203 to 192.2227** to an adult day care provider which

32 is not currently meeting the requirements necessary to obtain a license;

33 [(12)] (11) "Related", any of the following by blood, marriage or adoption:
34 parent, child, grandchild, brother, sister, half-brother, half-sister, stepparent,
35 uncle, aunt, niece, nephew, or first cousin;

36 [(13)] (12) "Staff participant ratio", the number of adult care staff
37 required by the [division] **department** in relation to the number of adults being
38 cared for by such staff.

 [660.403.] **192.2203.** 1. It shall be unlawful for any person to establish,
2 maintain, or operate an adult day care program, or to advertise or hold himself
3 out as being able to perform any adult day care service, unless he has obtained
4 the proper license.

5 2. All applications for licenses shall be made on forms provided by the
6 [division] **department** and in the manner prescribed by the [division]
7 **department**. All forms provided shall include a fee schedule.

8 3. The [division] **department** shall conduct an investigation of the adult
9 day care program, and the applicant, for which a license is sought in order to
10 determine if such program is complying with the following:

11 (1) Local fire safety requirements or fire safety requirements of the
12 [division] **department** if there are no local codes;

13 (2) Local or state sanitation requirements;

14 (3) Local building and zoning requirements, where applicable;

15 (4) Staff/adult ratios required by the [division] **department**; and

16 (5) Other applicable provisions of sections [199.025, RSMo, and 660.403
17 to 660.420] **192.2203 to 192.2227** and all applicable rules promulgated pursuant
18 thereto, including but not limited to:

19 (a) The applicant's ability to render adult day care;

20 (b) The proposed plan for providing adult day care;

21 (c) The proposed plan of operation of the adult day care program, so that,
22 in the judgment of the [division] **department**, minimum standards are being met
23 to insure the health and safety of the participants.

24 4. Following completion of its investigation made pursuant to subsection
25 3 of this section and a finding that the applicant for a license has complied with
26 all applicable rules promulgated pursuant to sections [199.025, RSMo, and
27 660.403 to 660.420 the division] **192.2203 to 192.2227, the department** shall
28 issue a license to such applicant. Such license shall be valid for the period
29 designated by the [division] **department**, which period shall not exceed two

30 years from the date of issuance, for the premises and persons named in the
31 application.

32 5. Each license issued under sections [199.025, RSMo, and 660.403 to
33 660.420] **192.2203 to 192.2227** shall include the name of the provider, owner and
34 operator; the name of the adult day care program; the location of the adult day
35 care program; the hours of operations; the number and any limitations or the type
36 of participants who may be served; and the period for which such license is valid.

37 6. The [division] **department** may issue a provisional license to an adult
38 day care program that is not currently meeting requirements for a license but
39 which demonstrates the potential capacity to meet full requirements for license;
40 except that, no provisional license shall be issued unless the director is satisfied
41 that the operation of the adult day care program is not detrimental to the health
42 and safety of the participants being served. The provisional license shall be
43 nonrenewable and shall be valid for the period designated by the [division]
44 **department**, which period shall not exceed six months from the date of
45 issuance. Upon issuance of a regular license, a day care program's provisional
46 license shall immediately be null and void.

 [660.405.] **192.2206.** 1. The provisions of sections [199.025, RSMo, and
2 660.403 to 660.420] **192.2203 to 192.2227** shall not apply to the following:

3 (1) Any adult day care program operated by a person in which care is
4 offered for no more than two hours per day;

5 (2) Any adult day care program maintained or operated by the federal
6 government except where care is provided through a management contract;

7 (3) Any person who cares solely for persons related to the provider or who
8 has been designated as guardian of that person;

9 (4) Any adult day care program which cares for no more than four persons
10 unrelated to the provider;

11 (5) Any adult day care program licensed by the department of mental
12 health under chapter 630, RSMo, which provides care, treatment and habilitation
13 exclusively to adults who have a primary diagnosis of mental disorder, mental
14 illness, mental retardation or developmental disability as defined;

15 (6) Any adult day care program administered or maintained by a religious
16 not-for-profit organization serving a social or religious function if the adult day
17 care program does not hold itself out as providing the prescription or usage of
18 physical or medical therapeutic activities or as providing or administering
19 medicines or drugs.

20 2. Nothing in this section shall prohibit any person listed in subsection
21 1 of this section from applying for a license or receiving a license if the adult day
22 care program owned or operated by such person conforms to the provisions of
23 sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** and all
24 applicable rules promulgated pursuant thereto.

 [660.407.] **192.2209.** 1. The director, or his authorized representative,
2 shall have the right to enter the premises of an applicant for or holder of a license
3 at any time during the hours of operation of a center to determine compliance
4 with provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
5 **192.2227** and applicable rules promulgated pursuant thereto. Entry shall also
6 be granted for investigative purposes involving complaints regarding the
7 operations of an adult day care program. The [division] **department** shall make
8 at least two inspections per year, at least one of which shall be unannounced to
9 the operator or provider. The [division] **department** may make such other
10 inspections, announced or unannounced, as it deems necessary to carry out the
11 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
12 **192.2227.**

13 2. The applicant for or holder of a license shall cooperate with the
14 investigation and inspection by providing access to the adult day care program,
15 records and staff, and by providing access to the adult day care program to
16 determine compliance with the rules promulgated pursuant to sections [199.025,
17 RSMo, and 660.403 to 660.420] **192.2203 to 192.2227.**

18 3. Failure to comply with any lawful request of the [division]
19 **department** in connection with the investigation and inspection is a ground for
20 refusal to issue a license or for the suspension or revocation of a license.

21 4. The [division] **department** may designate to act for it, with full
22 authority of law, any instrumentality of any political subdivision of the state of
23 Missouri deemed by the [division] **department** to be competent to investigate
24 and inspect applicants for or holders of licenses.

 [660.409.] **192.2212.** Each application for a license, or the renewal
2 thereof, issued pursuant to sections [199.025, RSMo, and 660.403 to 660.420]
3 **192.2203 to 192.2227** shall be accompanied by a nonrefundable fee in the
4 amount required by the [division] **department**. The fee, to be determined by the
5 director [of the division], shall not exceed one hundred dollars and shall be based
6 on the licensed capacity of the applicant.

 [660.411.] **192.2215.** The [division] **department** shall offer technical

2 assistance or consultation to assist applicants for or holders of licenses or
3 provisional licenses in meeting the requirements of sections [199.025, RSMo, and
4 660.403 to 660.420] **192.2203 to 192.2227**, staff qualifications, and other aspects
5 involving the operation of an adult day care program, and to assist in the
6 achievement of programs of excellence related to the provision of adult day care.

[660.414.] **192.2218.** 1. Whenever the [division] **department** is advised
2 or has reason to believe that any person is operating an adult day care program
3 without a license, or provisional license, or that any holder of license, or
4 provisional license is not in compliance with the provisions of sections [199.025,
5 RSMo, and 660.403 to 660.420, the division] **192.2203 to 192.2227, the**
6 **department** shall make an investigation and inspection to ascertain the facts.
7 If the [division] **department** is not permitted access to the adult day care
8 program in question, the [division] **department** may apply to the circuit court
9 of the county in which the program is located for an order authorizing entry for
10 inspection. The court shall issue the order if it finds reasonable grounds
11 necessitating the inspection.

12 2. If the [division] **department** finds that the adult day care program is
13 being operated in violation of sections [199.025, RSMo, and 660.403 to 660.420]
14 **192.2203 to 192.2227**, it may seek, among other remedies, injunctive relief
15 against the adult day care program.

[660.416.] **192.2221.** 1. Any person aggrieved by an official action of the
2 [division] **department** either refusing to issue a license or revoking or
3 suspending a license may seek a determination thereon by the administrative
4 hearing commission [pursuant to the provisions of section 161.272] **under**
5 **section 621.045**, RSMo, et seq.; except that, the petition must be filed with the
6 administrative hearing commission within thirty days after the mailing or
7 delivery of notice to the applicant for or holder of such license or
8 certificate. When the notification of the official action is mailed to the applicant
9 for or holder of such a license, there shall be included in the notice a statement
10 of the procedure whereby the applicant for or holder of such license may appeal
11 the decision of the [division] **department** before the administrative hearing
12 commission. It shall not be a condition to such determination that the person
13 aggrieved seek a reconsideration, a rehearing or exhaust any other procedure
14 within the [division] **department**.

15 2. The administrative hearing commission may stay the revocation or
16 suspension of such certificate or license, pending the commission's findings and

17 determination in the cause, upon such conditions as the commission deems
18 necessary and appropriate including the posting of bond or other security; except
19 that, the commission shall not grant a stay or if a stay has already been entered
20 shall set aside its stay, if, upon application of the [division] **department**, the
21 commission finds reason to believe that continued operation of the facility to
22 which the certificate or license in question applies pending the commission's final
23 determination would present an imminent danger to the health, safety or welfare
24 of any person or a substantial probability that death or serious physical harm
25 would result. In any case in which the [division] **department** has refused to
26 issue a certificate or license, the commission shall have no authority to stay or to
27 require the issuance of a license pending final determination by the commission.

28 3. The administrative hearing commission shall make the final decision
29 as to the issuance, suspension, or revocation of a license. Any person aggrieved
30 by a final decision of the administrative hearing commission, including the
31 [division] **department**, may seek judicial review of such decision by filing a
32 petition for review in the court of appeals for the district in which the adult day
33 care program to which the license in question applies is located. Review shall be
34 had in accordance with the provisions of sections [161.337 and 161.338] **621.189**
35 **and 621.193**, RSMo.

[660.418.] **192.2224.** The director [of the division] shall have the
2 authority to promulgate rules pursuant to this section and chapter 536, RSMo,
3 in order to carry out the provisions of sections [199.025, RSMo, and 660.403 to
4 660.420. No rule or portion of a rule promulgated under the authority of section
5 199.025, RSMo, and sections 660.403 to 660.420 shall become effective unless it
6 has been promulgated pursuant to the provisions of section 536.024, RSMo]
7 **192.2203 to 192.2227. Any rule or portion of a rule, as that term is**
8 **defined in section 536.010, RSMo, that is created under the authority**
9 **delegated in this section shall become effective only if it complies with**
10 **and is subject to all of the provisions of chapter 536, RSMo, and, if**
11 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo,**
12 **are nonseverable and if any of the powers vested with the general**
13 **assembly pursuant to chapter 536, RSMo, to review, to delay the**
14 **effective date, or to disapprove and annul a rule are subsequently held**
15 **unconstitutional, then the grant of rulemaking authority and any rule**
16 **proposed or adopted after August 28, 2008, shall be invalid and void.**

[660.420.] **192.2227.** 1. Any person who violates any provision of

2 sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, or who,
3 for himself or for any other person, makes materially false statements in order
4 to obtain a certificate or license, or the renewal thereof, issued pursuant to
5 sections [199.025, RSMo, and 660.403 to 660.420, shall be] **192.2203 to**
6 **192.2227**, is guilty of a class A misdemeanor.

7 2. Any person who is convicted pursuant to this section shall, in addition
8 to all other penalties provided by law, have any license issued to [him] **such**
9 **person** under sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
10 **192.2227** revoked, and shall not operate, nor hold any license to operate, any
11 adult day care program, or other entity governed by the provisions of sections
12 [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** for a period of
13 three years after such conviction.

 [660.620.] **192.2250.** 1. There is hereby established an "Office of
2 Advocacy and Assistance for Senior Citizens" within the office of lieutenant
3 governor.

4 2. The senior citizen advocate shall coordinate activities with the
5 long-term care ombudsman program, as defined in section [660.600] **198.700**,
6 **RSMo**, on complaints made by or on behalf of senior citizens residing in
7 long-term care facilities.

8 3. The senior citizen advocate shall conduct a suitable investigation into
9 any actions complained of unless the senior citizen advocate finds that the
10 complaint pertains to a matter outside the scope of the authority of the senior
11 citizen advocate, the complainant has no substantive or procedural interest which
12 is directly affected by the matter complained about, or the complaint is trivial,
13 frivolous, vexatious or not made in good faith.

14 4. After completing his investigation of a complaint, the senior citizen
15 advocate shall inform the complainant, the agency, official or employee of action
16 recommended by the senior citizen advocate. The senior citizen advocate shall
17 make such reports and recommendations to the affected agencies, the governor
18 and the general assembly as he deems necessary to further the purposes of
19 sections [660.620 and 660.625] **192.2250 and 192.2253**.

20 5. The senior citizen advocate shall, in conjunction with the [division of
21 senior services, act as a clearinghouse for] **department, maintain** information
22 pertaining to and of interest to senior citizens and shall disseminate such
23 information as is necessary to inform senior citizens of their rights and of
24 governmental and nongovernmental services available to them.

[660.625.] **192.2253.** The senior citizen advocate shall maintain
2 confidentiality with respect to all matters, including the identities of the
3 complainants or witnesses coming before the senior citizen advocate unless the
4 complainant consents to the use of his or her name in the course of the
5 investigation.

197.101. 1. The department of health and senior services shall
2 **promulgate rules to establish a schedule of fees, not to exceed three**
3 **thousand dollars, to be paid by an applicant for an architectural plan**
4 **review of construction documents for new construction and alterations**
5 **to health facilities licensed under this chapter and chapter 198,**
6 **RSMo. The department shall have the authority to waive or reduce the**
7 **plan review fees using uniform guidelines for such waiver or**
8 **reduction. The fee schedule shall be designed to generate revenues to**
9 **fund the reasonable cost of providing architectural plan reviews and**
10 **consultation, and shall be based on the size of the construction**
11 **project. The director of the department shall collect all fees provided**
12 **for in this section and shall deposit such fees in the state treasury to**
13 **the credit of the general revenue fund.**

14 **2. All moneys collected under subsection 1 of this section shall**
15 **be used, subject to appropriation, for the purpose of carrying out the**
16 **review of facility plans submitted for review by facilities licensed**
17 **under this chapter and chapter 198, RSMo.**

18 **3. Any rule or portion of a rule, as that term is defined in section**
19 **536.010, RSMo, that is created under the authority delegated in this**
20 **section shall become effective only if it complies with and is subject to**
21 **all of the provisions of chapter 536, RSMo, and, if applicable, section**
22 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
23 **and if any of the powers vested with the general assembly pursuant to**
24 **chapter 536, RSMo, to review, to delay the effective date, or to**
25 **disapprove and annul a rule are subsequently held unconstitutional,**
26 **then the grant of rulemaking authority and any rule proposed or**
27 **adopted after August 28, 2008, shall be invalid and void.**

197.150. 1. The department shall require that each hospital, ambulatory
2 **surgical center, and other facility have in place procedures for monitoring and**
3 **enforcing compliance with infection control regulations and standards. Such**
4 **procedures shall be coordinated with administrative staff, personnel staff, and the**
5 **quality improvement program. Such procedures shall include, at a minimum,**

6 requirements for the facility's infection control program to conduct surveillance
7 of personnel with a portion of the surveillance to be done in such manner that
8 employees and medical staff are observed without their knowledge of such
9 observation, provided that this unobserved surveillance requirement shall not be
10 considered to be grounds for licensure enforcement action by the department until
11 the department establishes clear and verifiable criteria for determining
12 compliance. Such surveillance also may include monitoring of the rate of use of
13 hand hygiene products.

14 **2. Beginning January 1, 2009, the department shall require every**
15 **hospital licensed in this state to establish a methicillin-resistant**
16 **staphylococcus aureus (MRSA) control program. The program shall be**
17 **developed by the hospital's administrative staff, medical staff, and**
18 **quality improvement program, and shall:**

19 (1) Establish procedures to isolate identified MRSA-colonized
20 and MRSA-infected patients or use alternative methods to reduce the
21 risk of MRSA transmission when private rooms are not available;

22 (2) Establish procedures, protocols, and education for staff
23 known to be MRSA-colonized or MRSA-infected;

24 (3) Establish an infection-control intervention protocol that
25 includes at a minimum the following elements:

26 (a) Infection control precautions, based on nationally recognized
27 standards, for general surveillance of infected or colonized patients;

28 (b) Intervention protocols based on evidence-based standards;

29 (c) Physical plant operations related to infection control and
30 environmental cleaning;

31 (d) Strict hand washing hygiene protocols and the use of contact
32 barriers;

33 (e) Appropriate use of antimicrobial agents; and

34 (f) Mandatory educational programs for personnel.

198.006. As used in sections 198.003 to 198.186, unless the context clearly
2 indicates otherwise, the following terms mean:

3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm,
4 or financial exploitation by any person, firm, or corporation as defined
5 in section 570.145, RSMo;

6 (2) "Activities of daily living" or "ADL", one or more of the following
7 activities of daily living:

- 8 (a) Eating;
- 9 (b) Dressing;
- 10 (c) Bathing;
- 11 (d) Toileting;
- 12 (e) Transferring; and
- 13 (f) Walking;
- 14 (3) "Administrator", the person who is in general administrative charge
- 15 of a facility;
- 16 (4) "Affiliate":
- 17 (a) With respect to a partnership, each partner thereof;
- 18 (b) With respect to a limited partnership, the general partner and each
- 19 limited partner with an interest of five percent or more in the limited
- 20 partnership;
- 21 (c) With respect to a corporation, each person who owns, holds or has the
- 22 power to vote five percent or more of any class of securities issued by the
- 23 corporation, and each officer and director;
- 24 (d) With respect to a natural person, any parent, child, sibling, or spouse
- 25 of that person;
- 26 (5) "Appropriately trained and qualified individual", an individual who is
- 27 licensed or registered with the state of Missouri in a health care-related field or
- 28 an individual with a degree in a health care-related field or an individual with
- 29 a degree in a health care, social services, or human services field or an individual
- 30 licensed under chapter 344, RSMo, and who has received facility orientation
- 31 training under 19 CSR [30-86042(18)] **30-86.047(62)**, and dementia training
- 32 under section [660.050] **192.2000**, RSMo, and twenty-four hours of additional
- 33 training, approved by the department, consisting of definition and assessment of
- 34 activities of daily living, assessment of cognitive ability, service planning, and
- 35 interview skills;
- 36 (6) "Assisted living facility", any premises, other than a residential care
- 37 facility, intermediate care facility, or skilled nursing facility, that is utilized by
- 38 its owner, operator, or manager to provide twenty-four-hour care and services and
- 39 protective oversight to three or more residents who are provided with shelter,
- 40 board, and who may need and are provided with the following:
- 41 (a) Assistance with any activities of daily living and any instrumental
- 42 activities of daily living;
- 43 (b) Storage, distribution, or administration of medications; and

44 (c) Supervision of health care under the direction of a licensed physician,
45 provided that such services are consistent with a social model of care;
46 Such term shall not include a facility where all of the residents are related within
47 the fourth degree of consanguinity or affinity to the owner, operator, or manager
48 of the facility;

49 (7) "Community-based assessment", documented basic information and
50 analysis provided by appropriately trained and qualified individuals describing
51 an individual's abilities and needs in activities of daily living, instrumental
52 activities of daily living, vision/hearing, nutrition, social participation and
53 support, and cognitive functioning using an assessment tool approved by the
54 department of health and senior services that is designed for community-based
55 services and that is not the nursing home minimum data set;

56 (8) "Dementia", a general term for the loss of thinking, remembering, and
57 reasoning so severe that it interferes with an individual's daily functioning, and
58 may cause symptoms that include changes in personality, mood, and behavior;

59 (9) "Department", the Missouri department of health and senior services;

60 (10) "Emergency", a situation, physical condition or one or more practices,
61 methods or operations which presents imminent danger of death or serious
62 physical or mental harm to residents of a facility;

63 (11) "Facility", any residential care facility, assisted living facility,
64 intermediate care facility, or skilled nursing facility;

65 (12) "Health care provider", any person providing health care services or
66 goods to residents and who receives funds in payment for such goods or services
67 under **[Medicaid] MO HealthNet**;

68 (13) "Instrumental activities of daily living", or "IADL", one or more of the
69 following activities:

- 70 (a) Preparing meals;
- 71 (b) Shopping for personal items;
- 72 (c) Medication management;
- 73 (d) Managing money;
- 74 (e) Using the telephone;
- 75 (f) Housework; and
- 76 (g) Transportation ability;

77 (14) "Intermediate care facility", any premises, other than a residential
78 care facility, assisted living facility, or skilled nursing facility, which is utilized
79 by its owner, operator, or manager to provide twenty-four-hour accommodation,

80 board, personal care, and basic health and nursing care services under the daily
81 supervision of a licensed nurse and under the direction of a licensed physician to
82 three or more residents dependent for care and supervision and who are not
83 related within the fourth degree of consanguinity or affinity to the owner,
84 operator or manager of the facility;

85 (15) "Manager", any person other than the administrator of a facility who
86 contracts or otherwise agrees with an owner or operator to supervise the general
87 operation of a facility, providing such services as hiring and training personnel,
88 purchasing supplies, keeping financial records, and making reports;

89 (16) ["Medicaid"] **"MO HealthNet"**, medical assistance under section
90 208.151, RSMo, et seq., in compliance with Title XIX, Public Law 89-97, 1965
91 amendments to the Social Security Act (42 U.S.C. 301, et seq.), as amended;

92 (17) "Neglect", the failure to provide, by those responsible for the care,
93 custody, and control of a resident in a facility, the services which are reasonable
94 and necessary to maintain the physical and mental health of the resident, when
95 such failure presents either an imminent danger to the health, safety or welfare
96 of the resident or a substantial probability that death or serious physical harm
97 would result;

98 (18) "Operator", any person licensed or required to be licensed under the
99 provisions of sections 198.003 to 198.096 in order to establish, conduct or
100 maintain a facility;

101 (19) "Owner", any person who owns an interest of five percent or more in:

102 (a) The land on which any facility is located;

103 (b) The structure or structures in which any facility is located;

104 (c) Any mortgage, contract for deed, or other obligation secured in whole
105 or in part by the land or structure in or on which a facility is located; or

106 (d) Any lease or sublease of the land or structure in or on which a facility
107 is located.

108 "Owner" does not include a holder of a debenture or bond purchased at public
109 issue nor does it include any regulated lender unless the entity or person directly
110 or through a subsidiary operates a facility;

111 (20) "Protective oversight", an awareness twenty-four hours a day of the
112 location of a resident, the ability to intervene on behalf of the resident, the
113 supervision of nutrition, medication, or actual provisions of care, and the
114 responsibility for the welfare of the resident, except where the resident is on
115 voluntary leave;

116 (21) "Resident", a person who by reason of aging, illness, disease, or
117 physical or mental infirmity receives or requires care and services furnished by
118 a facility and who resides or boards in or is otherwise kept, cared for, treated or
119 accommodated in such facility for a period exceeding twenty-four consecutive
120 hours;

121 (22) "Residential care facility", any premises, other than an assisted living
122 facility, intermediate care facility, or skilled nursing facility, which is utilized by
123 its owner, operator or manager to provide twenty-four-hour care to three or more
124 residents, who are not related within the fourth degree of consanguinity or
125 affinity to the owner, operator, or manager of the facility and who need or are
126 provided with shelter, board, and with protective oversight, which may include
127 storage and distribution or administration of medications and care during
128 short-term illness or recuperation, except that, for purposes of receiving
129 supplemental welfare assistance payments under section 208.030, RSMo, only any
130 residential care facility licensed as a residential care facility II immediately prior
131 to August 28, 2006, and that continues to meet such licensure requirements for
132 a residential care facility II licensed immediately prior to August 28, 2006, shall
133 continue to receive after August 28, 2006, the payment amount allocated
134 immediately prior to August 28, 2006, for a residential care facility II under
135 section 208.030;

136 (23) "Skilled nursing facility", any premises, other than a residential care
137 facility, an assisted living facility, or an intermediate care facility, which is
138 utilized by its owner, operator or manager to provide for twenty-four-hour
139 accommodation, board and skilled nursing care and treatment services to at least
140 three residents who are not related within the fourth degree of consanguinity or
141 affinity to the owner, operator or manager of the facility. Skilled nursing care
142 and treatment services are those services commonly performed by or under the
143 supervision of a registered professional nurse for individuals requiring
144 twenty-four-hours-a-day care by licensed nursing personnel including acts of
145 observation, care and counsel of the aged, ill, injured or infirm, the
146 administration of medications and treatments as prescribed by a licensed
147 physician or dentist, and other nursing functions requiring substantial specialized
148 judgment and skill;

149 (24) "Social model of care", long-term care services based on the abilities,
150 desires, and functional needs of the individual delivered in a setting that is more
151 home-like than institutional and promotes the dignity, individuality, privacy,

152 independence, and autonomy of the individual. Any facility licensed as a
153 residential care facility II prior to August 28, 2006, shall qualify as being more
154 home-like than institutional with respect to construction and physical plant
155 standards;

156 (25) "Vendor", any person selling goods or services to a health care
157 provider;

158 (26) "Voluntary leave", an off-premise leave initiated by:

159 (a) A resident that has not been declared mentally incompetent or
160 incapacitated by a court; or

161 (b) A legal guardian of a resident that has been declared mentally
162 incompetent or incapacitated by a court.

198.074. 1. Effective August 28, 2007, all new facilities licensed **under**
2 **this chapter** on or after August 28, 2007, or any [facilities completing a]
3 **section of a facility licensed under this chapter in which a** major
4 renovation [to the facility] **has been completed** on or after August 28, 2007, as
5 defined and approved by the department, [and which are licensed under this
6 chapter] shall install and maintain an approved sprinkler system in accordance
7 with National Fire Protection Association (NFPA) 13.

8 2. Facilities that were initially licensed and had an approved sprinkler
9 system prior to August 28, 2007, shall continue to meet all laws, rules, and
10 regulations for testing, inspection and maintenance of the sprinkler system that
11 were in effect for such facilities on August 27, 2007.

12 3. Multi-level assisted living facilities that accept or retain any individual
13 with a physical, cognitive, or other impairment that prevents the individual from
14 safely evacuating the facility with minimal assistance shall install and maintain
15 an approved sprinkler system in accordance with NFPA 13. Single-story assisted
16 living facilities that accept or retain any individual with a physical, cognitive, or
17 other impairment that prevents the individual from safely evacuating the facility
18 with minimal assistance shall install and maintain an approved sprinkler system
19 in accordance with NFPA 13R.

20 4. All residential care and assisted living facilities [with] **licensed for**
21 more than twenty [residents] **beds** not included in subsection 3 of this section,
22 which are initially licensed under this chapter prior to August 28, 2007, and that
23 do not have installed an approved sprinkler system in accordance with NFPA 13R
24 prior to August 28, 2007, shall install and maintain an approved sprinkler system
25 in accordance with NFPA 13R by December 31, 2012, unless the facility meets the

26 safety requirements of Chapter 33 of existing residential board and care
27 occupancies of NFPA 101 life safety code. **Any such facilities that do not**
28 **have an approved sprinkler system in accordance with NFPA 13R by**
29 **December 31, 2012, shall be required to install an approved sprinkler**
30 **system in accordance with NFPA 13 by December 31, 2013.**

31 5. All skilled nursing and intermediate care facilities not required prior
32 to August 28, 2007, to install and maintain an approved sprinkler system shall
33 install and maintain an approved sprinkler system in accordance with NFPA 13
34 by December 31, 2012, unless the facility receives an exemption from the
35 department and presents evidence in writing from a certified sprinkler system
36 representative or licensed engineer that the facility is unable to install an
37 approved [National Fire Protection Association] **NFPA 13** system due to the
38 unavailability of water supply requirements associated with this system or the
39 facility meets the safety requirements of Chapter 33 of existing residential board
40 and care occupancies of NFPA 101 life safety code.

41 6. Facilities that [take a substantial step] **have submitted a plan for**
42 **compliance**, as [specified in] **required by** subsection [7] **10** of this section, to
43 install an approved NFPA **13** or 13R system prior to December 31, 2012, may
44 apply to the department for a loan in accordance with section 198.075 to install
45 such system. **All facilities described in subsections 3, 4, and 5 of this**
46 **section shall be eligible for the loan.** However, such loan shall [not] **only**
47 be available [if by December 31, 2009,] **until** the average total reimbursement for
48 the care of persons eligible for Medicaid public assistance in an assisted living
49 facility and residential care facility is equal to or exceeds fifty-two dollars per
50 day. The average total reimbursement includes room, board, and care delivered
51 by the facility, but shall not include payments to the facility for care or services
52 not provided by the facility. [If a facility under this subsection does not have an
53 approved sprinkler system installed by December 31, 2012, such facility shall be
54 required to install and maintain an approved sprinkler system in accordance with
55 NFPA 13 by December 31, 2013.] Such loans received under this subsection and
56 in accordance with section 198.075, shall be paid in full as follows:

57 (1) Ten years for those facilities approved for the loan and whose average
58 total reimbursement rate for the care of persons eligible for Medicaid public
59 assistance is equal to forty-eight and no more than forty-nine dollars per day;

60 (2) Eight years for those facilities approved for the loan and whose
61 average total reimbursement rate for the care of persons eligible for Medicaid

62 public assistance is greater than forty-nine and no more than fifty-two dollars per
63 day; or

64 (3) Five years for those facilities approved for the loan and whose average
65 total reimbursement rate for the care of persons eligible for Medicaid public
66 assistance is greater than fifty-two dollars per day.

67 (4) No payments or interest shall be due until the average total
68 reimbursement rate for the care of persons eligible for Medicaid public assistance
69 is equal to or greater than forty-eight dollars.

70 7. (1) All facilities licensed under this chapter shall be equipped with a
71 [complete] fire alarm system in compliance with [NFPA 101, Life Safety Code for
72 Detection, Alarm, and Communication Systems as referenced in] NFPA 72[, or
73 shall maintain a system that was approved by the department when such facility
74 was constructed so long as such system is a complete fire alarm system]. A
75 [complete] fire alarm system shall include, but not be limited to, interconnected
76 smoke detectors [throughout the facility], automatic transmission to the fire
77 department, dispatching agency, or central monitoring company, manual pull
78 stations at each required exit and attendant's station, heat detectors, and audible
79 and visual alarm indicators.

80 (2) In addition, each floor accessed by residents shall be divided into at
81 least two smoke sections by one-hour rated smoke partitions. No smoke section
82 shall exceed one hundred fifty feet in length. If neither the length nor the width
83 of the floor exceeds seventy-five feet, no smoke-stop partition shall be
84 required. Facilities with a [complete] fire alarm system and smoke sections
85 meeting the requirements of this subsection prior to August 28, 2007, shall
86 continue to meet such requirements. Facilities initially licensed on or after
87 August 28, 2007, shall comply with such requirements beginning August 28, 2007,
88 or on the effective date of licensure.

89 (3) Except as otherwise provided in this subsection, the requirements for
90 [complete] fire alarm systems and smoke sections shall be enforceable on
91 December 31, 2008.

92 8. The requirements of this section shall be construed to supersede the
93 provisions of section 198.058 relating to the exemption of facilities from
94 construction standards.

95 9. Fire safety inspections of facilities licensed under this chapter for
96 compliance with this section shall be conducted annually by the state fire marshal
97 [if such inspections are not available to be conducted by local fire protection

98 districts or fire departments. The provisions of this section shall be enforced by
99 the state fire marshal or by the local fire protection district or fire department,
100 depending on which entity conducted the inspection] **or by local fire**
101 **protection districts or fire departments if such districts or departments**
102 **are deemed qualified to conduct facility inspections by the state fire**
103 **marshal. The state fire marshal shall report the results of facility**
104 **inspections to the department in order for the department to make**
105 **licensure and other appropriate decisions.**

106 10. By July 1, [2008] **2009**, all facilities licensed under this chapter shall
107 submit a plan for compliance with the provisions of this section to the state fire
108 marshal.

198.075. 1. There is hereby created in the state treasury the "Fire Safety
2 Standards Loan Fund", for implementing the provisions of subsection [3] **6** of
3 section 198.074. Moneys deposited in the fund shall be considered state funds
4 under article IV, section 15 of the Missouri Constitution. The state treasurer
5 shall be custodian of the fund and may disburse moneys from the fund in
6 accordance with sections 30.170 and 30.180, RSMo. Any moneys remaining in the
7 fund at the end of the biennium shall revert to the credit of the general revenue
8 fund. The state treasurer shall invest moneys in the fund in the same manner
9 as other funds are invested. Any interest and moneys earned on such
10 investments shall be credited to the fund.

11 2. Qualifying facilities shall make an application to the department of
12 health and senior services upon forms provided by the department. **Such**
13 **application and loan shall be available to facilities by January 1,**
14 **2009.** Upon receipt of an application for a loan, the department shall review the
15 application and advise the governor before state funds are allocated for a
16 loan. For purposes of this section, a "qualifying facility" shall mean a facility
17 licensed under this chapter that is in substantial compliance. "Substantial
18 compliance" shall mean a facility that has no uncorrected deficiencies and is in
19 compliance with department of health and senior services rules and regulations
20 governing such facility.

21 3. The fund shall be a loan of which the interest rate shall not exceed two
22 and one-half percent.

23 4. The fund shall be administered by the department of health and senior
24 services.

198.090. 1. An operator may make available to any resident the service

2 of holding in trust personal possessions and funds of the resident and shall, as
3 authorized by the resident, expend the funds to meet the resident's personal
4 needs. In providing this service the operator shall:

5 (1) At the time of admission, provide each resident or his next of kin or
6 legal guardian with a written statement explaining the resident's rights
7 regarding personal funds;

8 (2) Accept funds and personal possessions from or for a resident for
9 safekeeping and management, only upon written authorization by the resident or
10 by his designee, or guardian in the case of an adjudged incompetent;

11 (3) Deposit any personal funds received from or on behalf of a resident in
12 an account separate from the facility's funds, except that an amount to be
13 established by rule of the [division of aging] **department** may be kept in a petty
14 cash fund for the resident's personal needs;

15 (4) Keep a written account, available to a resident and his designee or
16 guardian, maintained on a current basis for each resident, with written receipts,
17 for all personal possessions and funds received by or deposited with the facility
18 and for all disbursements made to or on behalf of the resident;

19 (5) Provide each resident or his designee or guardian with a quarterly
20 accounting of all financial transactions made on behalf of the resident;

21 (6) Within five days of the discharge of a resident, provide the resident,
22 or his designee or guardian, with an up-to-date accounting of the resident's
23 personal funds and return to the resident the balance of his funds and all his
24 personal possessions;

25 (7) Upon the death of a resident who has been a recipient of aid,
26 assistance, care, services, or who has had moneys expended on his behalf by the
27 department of social services, provide the department **of social services** a
28 complete account of all the resident's personal funds within sixty days from the
29 date of death.

30 The total amount paid to the decedent or expended upon his behalf by the
31 department **of social services** shall be a debt due the state and recovered from
32 the available funds upon the [department's] claim **by the department of social**
33 **services** on such funds. The department **of social services** shall make a claim
34 on the funds within sixty days from the date of the accounting of the funds by the
35 facility. The nursing facility shall pay the claim made by the department of social
36 services from the resident's personal funds within sixty days. Where the name
37 and address are reasonably ascertainable, the department of social services shall

38 give notice of the debt due the state to the person whom the recipient had
39 designated to receive the quarterly accounting of all financial transactions made
40 under this section, or the resident's guardian or conservator or the person or
41 persons listed in nursing home records as a responsible party or the fiduciary of
42 the resident's estate. If any funds are available after the [department's] claim
43 **by the department of social services**, the remaining provisions of this section
44 shall apply to the balance, unless the funds belonged to a person other than the
45 resident, in which case the funds shall be paid to that person;

46 (8) Upon the death of a resident who has not been a recipient of aid,
47 assistance, care, services, or who has not had moneys expended on his behalf by
48 the department of social services or the department **of social services** has not
49 made a claim on the funds, provide the fiduciary of resident's estate, at the
50 fiduciary's request, a complete account of all the resident's personal funds and
51 possessions and deliver to the fiduciary all possessions of the resident and the
52 balance of the resident's funds. If, after one year from the date of death, no
53 fiduciary makes claim upon such funds or possessions, the operator shall notify
54 the department that the funds remain unclaimed. Such unclaimed funds or
55 possessions shall be disposed of as follows:

56 (a) If the unclaimed funds or possessions have a value totaling one
57 hundred and fifty dollars or less, the funds or the proceeds of the sale of the
58 possessions may be deposited in a fund to be used for the benefit of all residents
59 of the facility by providing the residents social or educational activities. The
60 facility shall keep an accounting of the acquisitions and expenditure of these
61 funds; or

62 (b) If the unclaimed funds or possessions have a value greater than one
63 hundred and fifty dollars, the funds or possessions shall be immediately
64 presumed to be abandoned property under sections 447.500 to 447.585, RSMo,
65 and the procedures provided for in those sections shall apply notwithstanding any
66 other provisions of those sections which require a period greater than two years
67 for a presumption of abandonment;

68 (9) Upon ceasing to be the operator of a facility, all funds and property
69 held in trust pursuant to this section shall be transferred to the new operator in
70 accordance with sound accounting principles, and a closeout report signed by both
71 the outgoing operator and the successor operator shall be prepared. The closeout
72 report shall include a list of current balances of all funds held for residents
73 respectively and an inventory of all property held for residents respectively. If

74 the outgoing operator refuses to sign the closeout report, he shall state in writing
75 the specific reasons for his failure to so sign, and the successor operator shall
76 complete the report and attach an affidavit stating that the information contained
77 therein is true to the best of his knowledge and belief. Such report shall be
78 retained with all other records and accounts required to be maintained under this
79 section;

80 (10) Not be required to invest any funds received from or on behalf of a
81 resident, nor to increase the principal of any such funds.

82 2. Any owner, operator, manager, employee, or affiliate of an owner or
83 operator who receives any personal property or anything else of value from a
84 resident, shall, if the thing received has a value of ten dollars or more, make a
85 written statement giving the date it was received, from whom it was received, and
86 its estimated value. Statements required to be made pursuant to this subsection
87 shall be retained by the operator and shall be made available for inspection by
88 the department, or by the department of mental health when the resident has
89 been placed by that department, and by the resident, and his designee or legal
90 guardian. Any person who fails to make a statement required by this subsection
91 is guilty of a class C misdemeanor.

92 3. No owner, operator, manager, employee, or affiliate of an owner or
93 operator shall in one calendar year receive any personal property or anything else
94 of value from the residents of any facility which have a total estimated value in
95 excess of one hundred dollars.

96 4. Subsections 2 and 3 of this section shall not apply if the property or
97 other thing of value is held in trust in accordance with subsection 1 of this
98 section, is received in payment for services rendered or pursuant to the terms of
99 a lawful contract, or is received from a resident who is related to the recipient
100 within the fourth degree of consanguinity or affinity.

101 5. Any operator who fails to maintain records or who fails to maintain any
102 resident's personal funds in an account separate from the facility's funds as
103 required by this section shall be guilty of a class C misdemeanor.

104 6. Any operator, or any affiliate or employee of an operator, who puts to
105 his own use or the use of the facility or otherwise diverts from the resident's use
106 any personal funds of the resident shall be guilty of a class A misdemeanor.

107 [7. Any person having reasonable cause to believe that a misappropriation
108 of a resident's funds or property has occurred may report such information to the
109 department.

110 8. For each report the division shall attempt to obtain the name and
111 address of the facility, the name of the facility employee, the name of the
112 resident, information regarding the nature of the misappropriation, the name of
113 the complainant, and any other information which might be helpful in an
114 investigation.

115 9. Upon receipt of a report, the department shall initiate an investigation.

116 10. If the investigation indicates probable misappropriation of property
117 or funds of a resident, the investigator shall refer the complaint together with his
118 report to the department director or his designee for appropriate action.

119 11. Reports shall be confidential, as provided under section 660.320,
120 RSMo.

121 12. Anyone, except any person participating in or benefiting from the
122 misappropriation of funds, who makes a report pursuant to this section or who
123 testifies in any administrative or judicial proceeding arising from the report shall
124 be immune from any civil or criminal liability for making such a report or for
125 testifying except for liability for perjury, unless such person acted negligently,
126 recklessly, in bad faith, or with malicious purpose.

127 13. Within five working days after a report required to be made under this
128 section is received, the person making the report shall be notified in writing of
129 its receipt and of the initiation of the investigation.

130 14. No person who directs or exercises any authority in a facility shall
131 evict, harass, dismiss or retaliate against a resident or employee because he or
132 any member of his family has made a report of any violation or suspected
133 violation of laws, ordinances or regulations applying to the facility which he has
134 reasonable cause to believe has been committed or has occurred.

135 15. The department shall maintain the employee disqualification list and
136 place on the employee disqualification list the names of any persons who have
137 been finally determined by the department, pursuant to section 660.315, RSMo,
138 to have misappropriated any property or funds of a resident while employed in
139 any facility.]

198.532. 1. Complaints filed with the department of health and senior
2 services against a long-term care facility which allege that harm has occurred or
3 is likely to occur to a resident or residents of the facility due to actions or the lack
4 of actions taken by the facility shall be investigated within thirty days of receipt
5 of such complaints. The purpose of such investigation shall be to ensure the
6 safety, protection and care of all residents of the facility likely to be affected by

7 the alleged action or inaction. Such investigation shall be in addition to the
8 investigation requirements for abuse and neglect reports pursuant to section
9 [198.070] **192.2150, RSMo.**

10 2. The department shall provide the results of all investigations in
11 accordance with section [660.320] **192.2150, RSMo.** The department shall
12 provide the results of such investigation in writing to all parties to the complaint,
13 and if requested, to any of the facility's residents, or their family members or
14 guardians. Complaints and written results will be readily available for public
15 access and review at the department of health and senior services and at the
16 long-term care facility. Personal information identifying the resident will be
17 blanked out, except in regard to immediate family, the attorney-in-fact or the
18 legal guardian of the resident in question. This information will remain readily
19 available for a period of time determined by the department of health and senior
20 services.

[660.600.] **198.700.** As used in sections [660.600 to 660.608] **198.700 to**
2 **198.708,** the following terms mean:

3 (1) ["Division", the division of aging of] **"Department",** the department
4 of [social] **health and senior** services;

5 (2) "Long-term care facility", any facility licensed pursuant to chapter 198,
6 RSMo, and long-term care facilities connected with hospitals licensed pursuant
7 to chapter 197, RSMo;

8 (3) "Office", the office of the state ombudsman for long-term care facility
9 residents;

10 (4) "Ombudsman", the state ombudsman for long-term care facility
11 residents;

12 (5) "Regional ombudsman coordinators", designated individuals working
13 for, or under contract with, the area agencies on aging, and who are so designated
14 by the area agency on aging and certified by the ombudsman as meeting the
15 qualifications established by the [division] **department;**

16 (6) "Resident", any person who is receiving care or treatment in a
17 long-term care facility.

[660.603.] **198.703.** 1. There is hereby established within the
2 department of health and senior services the "Office of State Ombudsman for
3 Long-Term Care Facility Residents", for the purpose of helping to assure the
4 adequacy of care received by residents of long-term care facilities and to improve
5 the quality of life experienced by them, in accordance with the federal Older

6 Americans Act, 42 U.S.C. 3001, et seq.

7 2. The office shall be administered by the state ombudsman, who shall
8 devote his or her entire time to the duties of his or her position.

9 3. The office shall establish and implement procedures for receiving,
10 processing, responding to, and resolving complaints made by or on behalf of
11 residents of long-term care facilities relating to action, inaction, or decisions of
12 providers, or their representatives, of long-term care services, of public agencies
13 or of social service agencies, which may adversely affect the health, safety,
14 welfare or rights of such residents.

15 4. The department shall establish and implement procedures for
16 resolution of complaints. The ombudsman or representatives of the office shall
17 have the authority to:

18 (1) Enter any long-term care facility and have access to residents of the
19 facility at a reasonable time and in a reasonable manner. The ombudsman shall
20 have access to review resident records, if given permission by the resident or the
21 resident's legal guardian. Residents of the facility shall have the right to request,
22 deny, or terminate visits with an ombudsman;

23 (2) Make the necessary inquiries and review such information and records
24 as the ombudsman or representative of the office deems necessary to accomplish
25 the objective of verifying these complaints.

26 5. The office shall acknowledge complaints, report its findings, make
27 recommendations, gather and disseminate information and other material, and
28 publicize its existence.

29 6. The ombudsman may recommend to the relevant governmental agency
30 changes in the rules and regulations adopted or proposed by such governmental
31 agency which do or may adversely affect the health, safety, welfare, or civil or
32 human rights of any resident in a facility. The office shall analyze and monitor
33 the development and implementation of federal, state and local laws, regulations
34 and policies with respect to long-term care facilities and services in the state and
35 shall recommend to the department changes in such laws, regulations and
36 policies deemed by the office to be appropriate.

37 7. The office shall promote community contact and involvement with
38 residents of facilities through the use of volunteers and volunteer programs
39 directed by the regional ombudsman coordinators.

40 8. The office shall develop and establish by regulation of the department
41 statewide policies and standards for implementing the activities of the

42 ombudsman program, including the qualifications and the training of regional
43 ombudsman coordinators and ombudsman volunteers.

44 9. The office shall develop and propose programs for use, training and
45 coordination of volunteers in conjunction with the regional ombudsman
46 coordinators and may:

47 (1) Establish and conduct recruitment programs for volunteers;

48 (2) Establish and conduct training seminars, meetings and other programs
49 for volunteers; and

50 (3) Supply personnel, written materials and such other reasonable
51 assistance, including publicizing their activities, as may be deemed necessary.

52 10. The regional ombudsman coordinators and ombudsman volunteers
53 shall have the authority to report instances of abuse and neglect to the
54 ombudsman hotline operated by the department.

55 11. If the regional ombudsman coordinator or volunteer finds that a
56 nursing home administrator is not willing to work with the ombudsman program
57 to resolve complaints, the state ombudsman shall be notified. The department
58 shall establish procedures by rule in accordance with chapter 536, RSMo, for
59 implementation of this subsection.

60 12. The office shall prepare and distribute to each facility written notices
61 which set forth the address and telephone number of the office, a brief
62 explanation of the function of the office, the procedure to follow in filing a
63 complaint and other pertinent information.

64 13. The administrator of each facility shall ensure that such written
65 notice is given to every resident or the resident's guardian upon admission to the
66 facility and to every person already in residence, or to his guardian. The
67 administrator shall also post such written notice in a conspicuous, public place
68 in the facility in the number and manner set forth in the regulations adopted by
69 the department.

70 14. The office shall inform residents, their guardians or their families of
71 their rights and entitlements under state and federal laws and rules and
72 regulations by means of the distribution of educational materials and group
73 meetings.

[660.605.] **198.705.** 1. Any files maintained by the ombudsman program
2 shall be disclosed only at the discretion of the ombudsman having authority over
3 the disposition of such files, except that the identity of any complainant or
4 resident of a long-term care facility shall not be disclosed by such ombudsman

5 unless:

6 (1) Such complainant or resident, or the complainant's or resident's legal
7 representative, consents in writing to such disclosure; or

8 (2) Such disclosure is required by court order.

9 2. Any representative of the office conducting or participating in any
10 examination of a complaint who shall knowingly and willfully disclose to any
11 person other than the office, or those authorized by the office to receive it, the
12 name of any witness examined or any information obtained or given upon such
13 examination, shall be guilty of a class A misdemeanor. However, the ombudsman
14 conducting or participating in any examination of a complaint shall disclose the
15 final result of the examination to the facility with the consent of the resident.

16 3. Any statement or communication made by the office relevant to a
17 complaint received by, proceedings before or activities of the office and any
18 complaint or information made or provided in good faith by any person, shall be
19 absolutely privileged and such person shall be immune from suit.

20 4. The office shall not be required to testify in any court with respect to
21 matters held to be confidential in this section except as the court may deem
22 necessary to enforce the provisions of sections [660.600 to 660.608] **198.700 to**
23 **198.708**, or where otherwise required by court order.

[660.608.] **198.708.** 1. Any regional coordinator or local program staff,
2 whether an employee or an unpaid volunteer, shall be treated as a representative
3 of the office. No representative of the office shall be held liable for good faith
4 performance of his **or her** official duties under the provisions of sections [660.600
5 to 660.608] **198.700 to 198.708** and shall be immune from suit for the good faith
6 performance of such duties. Every representative of the office shall be considered
7 a state employee under section 105.711, RSMo.

8 2. No reprisal or retaliatory action shall be taken against any resident or
9 employee of a long-term care facility for any communication made or information
10 given to the office. Any person who knowingly or willfully violates the provisions
11 of this subsection shall be guilty of a class A misdemeanor. Any person who
12 serves or served on a quality assessment and assurance committee required under
13 42 U.S.C. sec. 1396r(b)(1)(B) and 42 CFR sec. 483.75(r), or as amended, shall be
14 immune from civil liability only for acts done directly as a member of such
15 committee so long as the acts are performed in good faith, without malice and are
16 required by the activities of such committee as defined in 42 CFR sec. [483.75(r)]
17 **483.75(o).**

208.152. 1. MO HealthNet payments shall be made on behalf of those
2 eligible needy persons as defined in section 208.151 who are unable to provide for
3 it in whole or in part, with any payments to be made on the basis of the
4 reasonable cost of the care or reasonable charge for the services as defined and
5 determined by the MO HealthNet division, unless otherwise hereinafter provided,
6 for the following:

7 (1) Inpatient hospital services, except to persons in an institution for
8 mental diseases who are under the age of sixty-five years and over the age of
9 twenty-one years; provided that the MO HealthNet division shall provide through
10 rule and regulation an exception process for coverage of inpatient costs in those
11 cases requiring treatment beyond the seventy-fifth percentile professional
12 activities study (PAS) or the MO HealthNet children's diagnosis length-of-stay
13 schedule; and provided further that the MO HealthNet division shall take into
14 account through its payment system for hospital services the situation of
15 hospitals which serve a disproportionate number of low-income patients;

16 (2) All outpatient hospital services, payments therefor to be in amounts
17 which represent no more than eighty percent of the lesser of reasonable costs or
18 customary charges for such services, determined in accordance with the principles
19 set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the
20 federal Social Security Act (42 U.S.C. 301, et seq.), but the MO HealthNet
21 division may evaluate outpatient hospital services rendered under this section
22 and deny payment for services which are determined by the MO HealthNet
23 division not to be medically necessary, in accordance with federal law and
24 regulations;

25 (3) Laboratory and X-ray services;

26 (4) Nursing home services for participants, except to persons with more
27 than five hundred thousand dollars equity in their home or except for persons in
28 an institution for mental diseases who are under the age of sixty-five years, when
29 residing in a hospital licensed by the department of health and senior services or
30 a nursing home licensed by the department of health and senior services or
31 appropriate licensing authority of other states or government-owned and
32 -operated institutions which are determined to conform to standards equivalent
33 to licensing requirements in Title XIX of the federal Social Security Act (42
34 U.S.C. 301, et seq.), as amended, for nursing facilities. The MO HealthNet
35 division may recognize through its payment methodology for nursing facilities
36 those nursing facilities which serve a high volume of MO HealthNet

37 patients. The MO HealthNet division when determining the amount of the
38 benefit payments to be made on behalf of persons under the age of twenty-one in
39 a nursing facility may consider nursing facilities furnishing care to persons under
40 the age of twenty-one as a classification separate from other nursing facilities;

41 (5) Nursing home costs for participants receiving benefit payments under
42 subdivision (4) of this subsection for those days, which shall not exceed twelve per
43 any period of six consecutive months, during which the participant is on a
44 temporary leave of absence from the hospital or nursing home, provided that no
45 such participant shall be allowed a temporary leave of absence unless it is
46 specifically provided for in his plan of care. As used in this subdivision, the term
47 "temporary leave of absence" shall include all periods of time during which a
48 participant is away from the hospital or nursing home overnight because he is
49 visiting a friend or relative;

50 (6) Physicians' services, whether furnished in the office, home, hospital,
51 nursing home, or elsewhere;

52 (7) Drugs and medicines when prescribed by a licensed physician, dentist,
53 or podiatrist; except that no payment for drugs and medicines prescribed on and
54 after January 1, 2006, by a licensed physician, dentist, or podiatrist may be made
55 on behalf of any person who qualifies for prescription drug coverage under the
56 provisions of P.L. 108-173;

57 (8) Emergency ambulance services and, effective January 1, 1990,
58 medically necessary transportation to scheduled, physician-prescribed nonelective
59 treatments;

60 (9) Early and periodic screening and diagnosis of individuals who are
61 under the age of twenty-one to ascertain their physical or mental defects, and
62 health care, treatment, and other measures to correct or ameliorate defects and
63 chronic conditions discovered thereby. Such services shall be provided in
64 accordance with the provisions of Section 6403 of P.L. 101-239 and federal
65 regulations promulgated thereunder;

66 (10) Home health care services;

67 (11) Family planning as defined by federal rules and regulations;
68 provided, however, that such family planning services shall not include abortions
69 unless such abortions are certified in writing by a physician to the MO HealthNet
70 agency that, in his professional judgment, the life of the mother would be
71 endangered if the fetus were carried to term;

72 (12) Inpatient psychiatric hospital services for individuals under age

73 twenty-one as defined in Title XIX of the federal Social Security Act (42 U.S.C.
74 1396d, et seq.);

75 (13) Outpatient surgical procedures, including presurgical diagnostic
76 services performed in ambulatory surgical facilities which are licensed by the
77 department of health and senior services of the state of Missouri; except, that
78 such outpatient surgical services shall not include persons who are eligible for
79 coverage under Part B of Title XVIII, Public Law 89-97, 1965 amendments to the
80 federal Social Security Act, as amended, if exclusion of such persons is permitted
81 under Title XIX, Public Law 89-97, 1965 amendments to the federal Social
82 Security Act, as amended;

83 (14) Personal care services which are medically oriented tasks having to
84 do with a person's physical requirements, as opposed to housekeeping
85 requirements, which enable a person to be treated by his physician on an
86 outpatient rather than on an inpatient or residential basis in a hospital,
87 intermediate care facility, or skilled nursing facility. Personal care services shall
88 be rendered by an individual not a member of the participant's family who is
89 qualified to provide such services where the services are prescribed by a physician
90 in accordance with a plan of treatment and are supervised by a licensed
91 nurse. Persons eligible to receive personal care services shall be those persons
92 who would otherwise require placement in a hospital, intermediate care facility,
93 or skilled nursing facility. Benefits payable for personal care services shall not
94 exceed for any one participant one hundred percent of the average statewide
95 charge for care and treatment in an intermediate care facility for a comparable
96 period of time. Such services, when delivered in a residential care facility or
97 assisted living facility licensed under chapter 198, RSMo, shall be authorized on
98 a tier level based on the services the resident requires and the frequency of the
99 services. A resident of such facility who qualifies for assistance under section
100 208.030 shall, at a minimum, if prescribed by a physician, qualify for the tier
101 level with the fewest services. The rate paid to providers for each tier of service
102 shall be set subject to appropriations. Subject to appropriations, each resident
103 of such facility who qualifies for assistance under section 208.030 and meets the
104 level of care required in this section shall, at a minimum, if prescribed by a
105 physician, be authorized up to one hour of personal care services per
106 day. Authorized units of personal care services shall not be reduced or tier level
107 lowered unless an order approving such reduction or lowering is obtained from
108 the resident's personal physician. Such authorized units of personal care services

109 or tier level shall be transferred with such resident if her or she transfers to
110 another such facility. Such provision shall terminate upon receipt of relevant
111 waivers from the federal Department of Health and Human Services. If the
112 Centers for Medicare and Medicaid Services determines that such provision does
113 not comply with the state plan, this provision shall be null and void. The MO
114 HealthNet division shall notify the revisor of statutes as to whether the relevant
115 waivers are approved or a determination of noncompliance is made;

116 (15) Mental health services. The state plan for providing medical
117 assistance under Title XIX of the Social Security Act, 42 U.S.C. 301, as amended,
118 shall include the following mental health services when such services are
119 provided by community mental health facilities operated by the department of
120 mental health or designated by the department of mental health as a community
121 mental health facility or as an alcohol and drug abuse facility or as a
122 child-serving agency within the comprehensive children's mental health service
123 system established in section 630.097, RSMo. The department of mental health
124 shall establish by administrative rule the definition and criteria for designation
125 as a community mental health facility and for designation as an alcohol and drug
126 abuse facility. Such mental health services shall include:

127 (a) Outpatient mental health services including preventive, diagnostic,
128 therapeutic, rehabilitative, and palliative interventions rendered to individuals
129 in an individual or group setting by a mental health professional in accordance
130 with a plan of treatment appropriately established, implemented, monitored, and
131 revised under the auspices of a therapeutic team as a part of client services
132 management;

133 (b) Clinic mental health services including preventive, diagnostic,
134 therapeutic, rehabilitative, and palliative interventions rendered to individuals
135 in an individual or group setting by a mental health professional in accordance
136 with a plan of treatment appropriately established, implemented, monitored, and
137 revised under the auspices of a therapeutic team as a part of client services
138 management;

139 (c) Rehabilitative mental health and alcohol and drug abuse services
140 including home and community-based preventive, diagnostic, therapeutic,
141 rehabilitative, and palliative interventions rendered to individuals in an
142 individual or group setting by a mental health or alcohol and drug abuse
143 professional in accordance with a plan of treatment appropriately established,
144 implemented, monitored, and revised under the auspices of a therapeutic team

145 as a part of client services management. As used in this section, mental health
146 professional and alcohol and drug abuse professional shall be defined by the
147 department of mental health pursuant to duly promulgated rules.

148 With respect to services established by this subdivision, the department of social
149 services, MO HealthNet division, shall enter into an agreement with the
150 department of mental health. Matching funds for outpatient mental health
151 services, clinic mental health services, and rehabilitation services for mental
152 health and alcohol and drug abuse shall be certified by the department of mental
153 health to the MO HealthNet division. The agreement shall establish a
154 mechanism for the joint implementation of the provisions of this subdivision. In
155 addition, the agreement shall establish a mechanism by which rates for services
156 may be jointly developed;

157 (16) Such additional services as defined by the MO HealthNet division to
158 be furnished under waivers of federal statutory requirements as provided for and
159 authorized by the federal Social Security Act (42 U.S.C. 301, et seq.) subject to
160 appropriation by the general assembly;

161 (17) Beginning July 1, 1990, the services of a certified pediatric or family
162 nursing practitioner with a collaborative practice agreement to the extent that
163 such services are provided in accordance with chapters 334 and 335, RSMo, and
164 regulations promulgated thereunder;

165 (18) Nursing home costs for participants receiving benefit payments under
166 subdivision (4) of this subsection to reserve a bed for the participant in the
167 nursing home during the time that the participant is absent due to admission to
168 a hospital for services which cannot be performed on an outpatient basis, subject
169 to the provisions of this subdivision:

170 (a) The provisions of this subdivision shall apply only if:

171 a. The occupancy rate of the nursing home is at or above ninety-seven
172 percent of MO HealthNet certified licensed beds, according to the most recent
173 quarterly census provided to the department of health and senior services which
174 was taken prior to when the participant is admitted to the hospital; and

175 b. The patient is admitted to a hospital for a medical condition with an
176 anticipated stay of three days or less;

177 (b) The payment to be made under this subdivision shall be provided for
178 a maximum of three days per hospital stay;

179 (c) For each day that nursing home costs are paid on behalf of a
180 participant under this subdivision during any period of six consecutive months

181 such participant shall, during the same period of six consecutive months, be
182 ineligible for payment of nursing home costs of two otherwise available temporary
183 leave of absence days provided under subdivision (5) of this subsection; and

184 (d) The provisions of this subdivision shall not apply unless the nursing
185 home receives notice from the participant or the participant's responsible party
186 that the participant intends to return to the nursing home following the hospital
187 stay. If the nursing home receives such notification and all other provisions of
188 this subsection have been satisfied, the nursing home shall provide notice to the
189 participant or the participant's responsible party prior to release of the reserved
190 bed;

191 (19) Prescribed medically necessary durable medical equipment. An
192 electronic web-based prior authorization system using best medical evidence and
193 care and treatment guidelines consistent with national standards shall be used
194 to verify medical need;

195 (20) **Comprehensive day rehabilitation services beginning early**
196 **posttrauma as part of a coordinated system of care for individuals with**
197 **disabling impairments. Rehabilitation services must be based on an**
198 **individualized, goal-oriented, comprehensive, and coordinated**
199 **treatment plan developed, implemented, and monitored through an**
200 **interdisciplinary assessment designed to restore an individual to**
201 **optimal level of physical, cognitive, and behavioral function. The MO**
202 **HealthNet division shall establish by administrative rule the definition**
203 **and criteria for designation of a comprehensive day rehabilitation**
204 **service facility, benefit limitations, and payment mechanism utilizing**
205 **the expertise of brain injury rehabilitation service providers and the**
206 **Missouri head injury advisory council created under section 192.745,**
207 **RSMo. Such services shall be provided in a community-based facility**
208 **and be authorized on tier levels based on the services the patient**
209 **requires and the frequency of the services as guided by a qualified**
210 **rehabilitation professional associated with a health care home. Any**
211 **rule or portion of a rule, as that term is defined in section 536.010,**
212 **RSMo, that is created under the authority delegated in this subdivision**
213 **shall become effective only if it complies with and is subject to all of**
214 **the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
215 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any**
216 **of the powers vested with the general assembly pursuant to chapter**

217 **536, RSMo, to review, to delay the effective date, or to disapprove and**
218 **annul a rule are subsequently held unconstitutional, then the grant of**
219 **rulemaking authority and any rule proposed or adopted after August**
220 **28, 2008, shall be invalid and void;**

221 (21) Hospice care. As used in this subsection, the term "hospice care"
222 means a coordinated program of active professional medical attention within a
223 home, outpatient and inpatient care which treats the terminally ill patient and
224 family as a unit, employing a medically directed interdisciplinary team. The
225 program provides relief of severe pain or other physical symptoms and supportive
226 care to meet the special needs arising out of physical, psychological, spiritual,
227 social, and economic stresses which are experienced during the final stages of
228 illness, and during dying and bereavement and meets the Medicare requirements
229 for participation as a hospice as are provided in 42 CFR Part 418. The rate of
230 reimbursement paid by the MO HealthNet division to the hospice provider for
231 room and board furnished by a nursing home to an eligible hospice patient shall
232 not be less than ninety-five percent of the rate of reimbursement which would
233 have been paid for facility services in that nursing home facility for that patient,
234 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus
235 Budget Reconciliation Act of 1989);

236 [(21)] (22) Prescribed medically necessary dental services. Such services
237 shall be subject to appropriations. An electronic web-based prior authorization
238 system using best medical evidence and care and treatment guidelines consistent
239 with national standards shall be used to verify medical need;

240 [(22)] (23) Prescribed medically necessary optometric services. Such
241 services shall be subject to appropriations. An electronic web-based prior
242 authorization system using best medical evidence and care and treatment
243 guidelines consistent with national standards shall be used to verify medical
244 need;

245 [(23)] (24) The MO HealthNet division shall, by January 1, 2008, and
246 annually thereafter, report the status of MO HealthNet provider reimbursement
247 rates as compared to one hundred percent of the Medicare reimbursement rates
248 and compared to the average dental reimbursement rates paid by third-party
249 payors licensed by the state. The MO HealthNet division shall, by July 1, 2008,
250 provide to the general assembly a four-year plan to achieve parity with Medicare
251 reimbursement rates and for third-party payor average dental reimbursement
252 rates. Such plan shall be subject to appropriation and the division shall include

253 in its annual budget request to the governor the necessary funding needed to
254 complete the four-year plan developed under this subdivision.

255 2. Additional benefit payments for medical assistance shall be made on
256 behalf of those eligible needy children, pregnant women and blind persons with
257 any payments to be made on the basis of the reasonable cost of the care or
258 reasonable charge for the services as defined and determined by the division of
259 medical services, unless otherwise hereinafter provided, for the following:

260 (1) Dental services;

261 (2) Services of podiatrists as defined in section 330.010, RSMo;

262 (3) Optometric services as defined in section 336.010, RSMo;

263 (4) Orthopedic devices or other prosthetics, including eye glasses,
264 dentures, hearing aids, and wheelchairs;

265 (5) Hospice care. As used in this subsection, the term "hospice care"
266 means a coordinated program of active professional medical attention within a
267 home, outpatient and inpatient care which treats the terminally ill patient and
268 family as a unit, employing a medically directed interdisciplinary team. The
269 program provides relief of severe pain or other physical symptoms and supportive
270 care to meet the special needs arising out of physical, psychological, spiritual,
271 social, and economic stresses which are experienced during the final stages of
272 illness, and during dying and bereavement and meets the Medicare requirements
273 for participation as a hospice as are provided in 42 CFR Part 418. The rate of
274 reimbursement paid by the MO HealthNet division to the hospice provider for
275 room and board furnished by a nursing home to an eligible hospice patient shall
276 not be less than ninety-five percent of the rate of reimbursement which would
277 have been paid for facility services in that nursing home facility for that patient,
278 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus
279 Budget Reconciliation Act of 1989);

280 (6) Comprehensive day rehabilitation services beginning early posttrauma
281 as part of a coordinated system of care for individuals with disabling
282 impairments. Rehabilitation services must be based on an individualized,
283 goal-oriented, comprehensive and coordinated treatment plan developed,
284 implemented, and monitored through an interdisciplinary assessment designed
285 to restore an individual to optimal level of physical, cognitive, and behavioral
286 function. The MO HealthNet division shall establish by administrative rule the
287 definition and criteria for designation of a comprehensive day rehabilitation
288 service facility, benefit limitations and payment mechanism. Any rule or portion

289 of a rule, as that term is defined in section 536.010, RSMo, that is created under
290 the authority delegated in this subdivision shall become effective only if it
291 complies with and is subject to all of the provisions of chapter 536, RSMo, and,
292 if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
293 nonseverable and if any of the powers vested with the general assembly pursuant
294 to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and
295 annul a rule are subsequently held unconstitutional, then the grant of
296 rulemaking authority and any rule proposed or adopted after August 28, 2005,
297 shall be invalid and void.

298 3. The MO HealthNet division may require any participant receiving MO
299 HealthNet benefits to pay part of the charge or cost until July 1, 2008, and an
300 additional payment after July 1, 2008, as defined by rule duly promulgated by the
301 MO HealthNet division, for all covered services except for those services covered
302 under subdivisions (14) and (15) of subsection 1 of this section and sections
303 208.631 to 208.657 to the extent and in the manner authorized by Title XIX of the
304 federal Social Security Act (42 U.S.C. 1396, et seq.) and regulations
305 thereunder. When substitution of a generic drug is permitted by the prescriber
306 according to section 338.056, RSMo, and a generic drug is substituted for a
307 name-brand drug, the MO HealthNet division may not lower or delete the
308 requirement to make a co-payment pursuant to regulations of Title XIX of the
309 federal Social Security Act. A provider of goods or services described under this
310 section must collect from all participants the additional payment that may be
311 required by the MO HealthNet division under authority granted herein, if the
312 division exercises that authority, to remain eligible as a provider. Any payments
313 made by participants under this section shall be in addition to and not in lieu of
314 payments made by the state for goods or services described herein except the
315 participant portion of the pharmacy professional dispensing fee shall be in
316 addition to and not in lieu of payments to pharmacists. A provider may collect
317 the co-payment at the time a service is provided or at a later date. A provider
318 shall not refuse to provide a service if a participant is unable to pay a required
319 payment. If it is the routine business practice of a provider to terminate future
320 services to an individual with an unclaimed debt, the provider may include
321 uncollected co-payments under this practice. Providers who elect not to
322 undertake the provision of services based on a history of bad debt shall give
323 participants advance notice and a reasonable opportunity for payment. A
324 provider, representative, employee, independent contractor, or agent of a

325 pharmaceutical manufacturer shall not make co-payment for a participant. This
326 subsection shall not apply to other qualified children, pregnant women, or blind
327 persons. If the Centers for Medicare and Medicaid Services does not approve the
328 Missouri MO HealthNet state plan amendment submitted by the department of
329 social services that would allow a provider to deny future services to an
330 individual with uncollected co-payments, the denial of services shall not be
331 allowed. The department of social services shall inform providers regarding the
332 acceptability of denying services as the result of unpaid co-payments.

333 4. The MO HealthNet division shall have the right to collect medication
334 samples from participants in order to maintain program integrity.

335 5. Reimbursement for obstetrical and pediatric services under subdivision
336 (6) of subsection 1 of this section shall be timely and sufficient to enlist enough
337 health care providers so that care and services are available under the state plan
338 for MO HealthNet benefits at least to the extent that such care and services are
339 available to the general population in the geographic area, as required under
340 subparagraph (a)(30)(A) of 42 U.S.C. 1396a and federal regulations promulgated
341 thereunder.

342 6. Beginning July 1, 1990, reimbursement for services rendered in
343 federally funded health centers shall be in accordance with the provisions of
344 subsection 6402(c) and Section 6404 of P.L. 101-239 (Omnibus Budget
345 Reconciliation Act of 1989) and federal regulations promulgated thereunder.

346 7. Beginning July 1, 1990, the department of social services shall provide
347 notification and referral of children below age five, and pregnant, breast-feeding,
348 or postpartum women who are determined to be eligible for MO HealthNet
349 benefits under section 208.151 to the special supplemental food programs for
350 women, infants and children administered by the department of health and senior
351 services. Such notification and referral shall conform to the requirements of
352 Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

353 8. Providers of long-term care services shall be reimbursed for their costs
354 in accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security
355 Act, 42 U.S.C. 1396a, as amended, and regulations promulgated thereunder.

356 9. Reimbursement rates to long-term care providers with respect to a total
357 change in ownership, at arm's length, for any facility previously licensed and
358 certified for participation in the MO HealthNet program shall not increase
359 payments in excess of the increase that would result from the application of
360 Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. 1396a (a)(13)(C).

361 10. The MO HealthNet division, may enroll qualified residential care
362 facilities and assisted living facilities, as defined in chapter 198, RSMo, as MO
363 HealthNet personal care providers.

364 11. Any income earned by individuals eligible for certified extended
365 employment at a sheltered workshop under chapter 178, RSMo, shall not be
366 considered as income for purposes of determining eligibility under this section.

 208.819. 1. **Subject to appropriations**, persons institutionalized in
2 nursing homes who are Medicaid eligible and who wish to move back into the
3 community shall be eligible for a one-time [Missouri] transition [to independence]
4 grant. The [Missouri] transition [to independence] grant shall be limited to up
5 to [fifteen] **twenty-four** hundred dollars to offset the initial down payments
6 [and], setup costs **and other expenditures** associated with housing a **senior**
7 **or** a person with disabilities **needing home and community based services**
8 as such person moves out of a nursing home. Such grants shall be established
9 and administered by the division of [vocational rehabilitation] **senior and**
10 **disability services** in consultation with the department of social services. The
11 division of [vocational rehabilitation] **senior and disability services** and the
12 department of social services shall cooperate in actively seeking federal and
13 private grant moneys to **further** fund this program; except that, such federal and
14 private grant moneys shall not limit the general assembly's ability to appropriate
15 moneys for the [Missouri] transition [to independence] grants.

16 2. The [division of medical services within the department of social
17 services, the] department of health and senior services and the [division of
18 vocational rehabilitation within the department of elementary and secondary
19 education] **department of mental health** shall work together to develop
20 information and training on community-based service options for residents
21 transitioning into the community **and shall promulgate rules as**
22 **needed**. [Representatives of disability-related community organizations shall
23 complete such training before initiating contact with institutionalized
24 individuals.]

 208.909. 1. Consumers receiving personal care assistance services shall
2 be responsible for:

- 3 (1) Supervising their personal care attendant;
- 4 (2) Verifying wages to be paid to the personal care attendant;
- 5 (3) Preparing and submitting time sheets, signed by both the consumer
6 and personal care attendant, to the vendor on a biweekly basis;

7 (4) Promptly notifying the department within ten days of any changes in
8 circumstances affecting the personal care assistance services plan or in the
9 consumer's place of residence; and

10 (5) Reporting any problems resulting from the quality of services rendered
11 by the personal care attendant to the vendor. If the consumer is unable to resolve
12 any problems resulting from the quality of service rendered by the personal care
13 attendant with the vendor, the consumer shall report the situation to the
14 department.

15 2. Participating vendors shall be responsible for:

16 (1) Collecting time sheets and certifying their accuracy;

17 (2) The [Medicaid] **MO HealthNet** reimbursement process, including the
18 filing of claims and reporting data to the department as required by rule;

19 (3) Transmitting the individual payment directly to the personal care
20 attendant on behalf of the consumer;

21 (4) Monitoring the performance of the personal care assistance services
22 plan.

23 3. No state or federal financial assistance shall be authorized or expended
24 to pay for services provided to a consumer under sections 208.900 to 208.927, if
25 the primary benefit of the services is to the household unit, or is a household task
26 that the members of the consumer's household may reasonably be expected to
27 share or do for one another when they live in the same household, unless such
28 service is above and beyond typical activities household members may reasonably
29 provide for another household member without a disability.

30 4. No state or federal financial assistance shall be authorized or expended
31 to pay for personal care assistance services provided by a personal care attendant
32 who [is listed on any of the background check lists in the family care safety
33 registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is
34 first obtained from the department in accordance with section 660.317, RSMo]:

35 **(1) Is listed on the employee disqualification list maintained by**
36 **the department of health and senior services under section 192.2150,**
37 **RSMo;**

38 **(2) Is registered as a sexual offender under section 589.400,**
39 **RSMo, and whose name appears on the sexual offender registry; or**

40 **(3) Has a disqualifying criminal history under section 192.2178,**
41 **RSMo, unless a good cause waiver is first obtained from the department**
42 **in accordance with section 192.2178, RSMo.**

210.150. 1. The children's division shall ensure the confidentiality of all
2 reports and records made pursuant to sections 210.109 to 210.183 and maintained
3 by the division, its local offices, the central registry, and other appropriate
4 persons, officials, and institutions pursuant to sections 210.109 to 210.183. To
5 protect the rights of the family and the child named in the report as a victim, the
6 children's division shall establish guidelines which will ensure that any disclosure
7 of information concerning the abuse and neglect involving that child is made only
8 to persons or agencies that have a right to such information. The division may
9 require persons to make written requests for access to records maintained by the
10 division. The division shall only release information to persons who have a right
11 to such information. The division shall notify persons receiving information
12 pursuant to subdivisions (2), (7), (8) and (9) of subsection 2 of this section of the
13 purpose for which the information is released and of the penalties for
14 unauthorized dissemination of information. Such information shall be used only
15 for the purpose for which the information is released.

16 2. Only the following persons shall have access to investigation records
17 contained in the central registry:

18 (1) Appropriate federal, state or local criminal justice agency personnel,
19 or any agent of such entity, with a need for such information under the law to
20 protect children from abuse or neglect;

21 (2) A physician or a designated agent who reasonably believes that the
22 child being examined may be abused or neglected;

23 (3) Appropriate staff of the division and of its local offices, including
24 interdisciplinary teams which are formed to assist the division in investigation,
25 evaluation and treatment of child abuse and neglect cases or a multidisciplinary
26 provider of professional treatment services for a child referred to the provider;

27 (4) Any child named in the report as a victim, or a legal representative,
28 or the parent, if not the alleged perpetrator, or guardian of such person when
29 such person is a minor, or is mentally ill or otherwise incompetent, but the names
30 of reporters shall not be furnished to persons in this category. Prior to the
31 release of any identifying information, the division shall determine if the release
32 of such identifying information may place a person's life or safety in danger. If
33 the division makes the determination that a person's life or safety may be in
34 danger, the identifying information shall not be released. The division shall
35 provide a method for confirming or certifying that a designee is acting on behalf
36 of a subject;

37 (5) Any alleged perpetrator named in the report, but the names of
38 reporters shall not be furnished to persons in this category. Prior to the release
39 of any identifying information, the division shall determine if the release of such
40 identifying information may place a person's life or safety in danger. If the
41 division makes the determination that a person's life or safety may be in danger,
42 the identifying information shall not be released. However, the investigation
43 reports will not be released to any alleged perpetrator with pending criminal
44 charges arising out of the facts and circumstances named in the investigation
45 records until an indictment is returned or an information filed **or, one year**
46 **after the division has notified in writing to the prosecuting attorney in**
47 **the jurisdiction where the acts forming the basis of the report are**
48 **alleged to have occurred, whichever occurs first. The prosecuting**
49 **attorney may petition the circuit court of such jurisdiction to extend**
50 **the one-year period for good cause shown, for such time as the court**
51 **may determine is necessary to complete the investigation and to file**
52 **any appropriate charges;**

53 (6) A grand jury, juvenile officer, prosecuting attorney, law enforcement
54 officer involved in the investigation of child abuse or neglect, juvenile court or
55 other court conducting abuse or neglect or child protective proceedings or child
56 custody proceedings, and other federal, state and local government entities, or
57 any agent of such entity, with a need for such information in order to carry out
58 its responsibilities under the law to protect children from abuse or neglect;

59 (7) Any person engaged in a bona fide research purpose, with the
60 permission of the director; provided, however, that no information identifying the
61 child named in the report as a victim or the reporters shall be made available to
62 the researcher, unless the identifying information is essential to the research or
63 evaluation and the child named in the report as a victim or, if the child is less
64 than eighteen years of age, through the child's parent, or guardian provides
65 written permission;

66 (8) Any child-care facility; child-placing agency; residential-care facility,
67 including group homes; juvenile courts; public or private elementary schools;
68 public or private secondary schools; or any other public or private agency
69 exercising temporary supervision over a child or providing or having care or
70 custody of a child who may request an examination of the central registry from
71 the division for all employees and volunteers or prospective employees and
72 volunteers, who do or will provide services or care to children. Any agency or

73 business recognized by the division or business which provides training and
74 places or recommends people for employment or for volunteers in positions where
75 they will provide services or care to children may request the division to provide
76 an examination of the central registry. Such agency or business shall provide
77 verification of its status as a recognized agency. Requests for examinations shall
78 be made to the division director or the director's designee in writing by the chief
79 administrative officer of the above homes, centers, public and private elementary
80 schools, public and private secondary schools, agencies, or courts. The division
81 shall respond in writing to that officer. The response shall include information
82 pertaining to the nature and disposition of any report or reports of abuse or
83 neglect revealed by the examination of the central registry. This response shall
84 not include any identifying information regarding any person other than the
85 alleged perpetrator of the abuse or neglect;

86 (9) Any parent or legal guardian who inquires about a child abuse or
87 neglect report involving a specific person or child-care facility who does or may
88 provide services or care to a child of the person requesting the
89 information. Request for examinations shall be made to the division director or
90 the director's designee, in writing, by the parent or legal guardian of the child
91 and shall be accompanied with a signed and notarized release form from the
92 person who does or may provide care or services to the child. The notarized
93 release form shall include the full name, date of birth and Social Security number
94 of the person who does or may provide care or services to a child. The response
95 shall include information pertaining to the nature and disposition of any report
96 or reports of abuse or neglect revealed by the examination of the central
97 registry. This response shall not include any identifying information regarding
98 any person other than the alleged perpetrator of the abuse or neglect. The
99 response shall be given within ten working days of the time it was received by the
100 division;

101 (10) Any person who inquires about a child abuse or neglect report
102 involving a specific child-care facility, child-placing agency, residential-care
103 facility, public and private elementary schools, public and private secondary
104 schools, juvenile court or other state agency. The information available to these
105 persons is limited to the nature and disposition of any report contained in the
106 central registry and shall not include any identifying information pertaining to
107 any person mentioned in the report;

108 (11) Any state agency acting pursuant to statutes regarding a license of

109 any person, institution, or agency which provides care for or services to children;
110 (12) Any child fatality review panel established pursuant to section
111 210.192 or any state child fatality review panel established pursuant to section
112 210.195;

113 (13) Any person who is a tenure-track or full-time research faculty
114 member at an accredited institution of higher education engaged in scholarly
115 research, with the permission of the director. Prior to the release of any
116 identifying information, the director shall require the researcher to present a plan
117 for maintaining the confidentiality of the identifying information. The researcher
118 shall be prohibited from releasing the identifying information of individual cases.

119 3. Only the following persons shall have access to records maintained by
120 the division pursuant to section 210.152 for which the division has received a
121 report of child abuse and neglect and which the division has determined that
122 there is insufficient evidence or in which the division proceeded with the family
123 assessment and services approach:

124 (1) Appropriate staff of the division;

125 (2) Any child named in the report as a victim, or a legal representative,
126 or the parent or guardian of such person when such person is a minor, or is
127 mentally ill or otherwise incompetent. The names or other identifying
128 information of reporters shall not be furnished to persons in this category. Prior
129 to the release of any identifying information, the division shall determine if the
130 release of such identifying information may place a person's life or safety in
131 danger. If the division makes the determination that a person's life or safety may
132 be in danger, the identifying information shall not be released. The division shall
133 provide for a method for confirming or certifying that a designee is acting on
134 behalf of a subject;

135 (3) Any alleged perpetrator named in the report, but the names of
136 reporters shall not be furnished to persons in this category. Prior to the release
137 of any identifying information, the division shall determine if the release of such
138 identifying information may place a person's life or safety in danger. If the
139 division makes the determination that a person's life or safety may be in danger,
140 the identifying information shall not be released. However, the investigation
141 reports will not be released to any alleged perpetrator with pending criminal
142 charges arising out of the facts and circumstances named in the investigation
143 records until an indictment is returned or an information filed **or, one year**
144 **after the division has notified in writing to the prosecuting attorney in**

145 the jurisdiction where the acts forming the basis of the report are
146 alleged to have occurred, whichever occurs first. The prosecuting
147 attorney may petition the circuit court of such jurisdiction to extend
148 the one-year period for good cause shown, for such time as the court
149 may determine is necessary to complete the investigation and to file
150 any appropriate charges;

151 (4) Any child fatality review panel established pursuant to section 210.192
152 or any state child fatality review panel established pursuant to section 210.195;

153 (5) Appropriate criminal justice agency personnel or juvenile officer;

154 (6) Multidisciplinary agency or individual including a physician or
155 physician's designee who is providing services to the child or family, with the
156 consent of the parent or guardian of the child or legal representative of the child;

157 (7) Any person engaged in bona fide research purpose, with the
158 permission of the director; provided, however, that no information identifying the
159 subjects of the reports or the reporters shall be made available to the researcher,
160 unless the identifying information is essential to the research or evaluation and
161 the subject, or if a child, through the child's parent or guardian, provides written
162 permission.

163 4. Any person who knowingly violates the provisions of this section, or
164 who permits or encourages the unauthorized dissemination of information
165 contained in the information system or the central registry and in reports and
166 records made pursuant to sections 210.109 to 210.183, shall be guilty of a class
167 A misdemeanor.

168 5. Nothing in this section shall preclude the release of findings or
169 information about cases which resulted in a child fatality or near fatality. Such
170 release is at the sole discretion of the director of the department of social services,
171 based upon a review of the potential harm to other children within the immediate
172 family.

210.152. 1. All identifying information, including telephone reports
2 reported pursuant to section 210.145, relating to reports of abuse or neglect
3 received by the division shall be retained by the division and removed from the
4 records of the division as follows:

5 (1) For investigation reports contained in the central registry, identifying
6 information shall be retained by the division;

7 (2) (a) For investigation reports initiated against a person required to
8 report pursuant to section 210.115, where insufficient evidence of abuse or neglect

9 is found by the division and where the division determines the allegation of abuse
10 or neglect was made maliciously, for purposes of harassment or in retaliation for
11 the filing of a report by a person required to report, identifying information shall
12 be expunged by the division within forty-five days from the conclusion of the
13 investigation;

14 (b) For investigation reports, where insufficient evidence of abuse or
15 neglect is found by the division and where the division determines the allegation
16 of abuse or neglect was made maliciously, for purposes of harassment or in
17 retaliation for the filing of a report, identifying information shall be expunged by
18 the division within forty-five days from the conclusion of the investigation;

19 (c) For investigation reports initiated by a person required to report under
20 section 210.115, where insufficient evidence of abuse or neglect is found by the
21 division, identifying information shall be retained for five years from the
22 conclusion of the investigation. For all other investigation reports where
23 insufficient evidence of abuse or neglect is found by the division, identifying
24 information shall be retained for two years from the conclusion of the
25 investigation. Such reports shall include any exculpatory evidence known by the
26 division, including exculpatory evidence obtained after the closing of the case. At
27 the end of such time period, the identifying information shall be removed from
28 the records of the division and destroyed;

29 (3) For reports where the division uses the family assessment and services
30 approach, identifying information shall be retained by the division;

31 (4) For reports in which the division is unable to locate the child alleged
32 to have been abused or neglected, identifying information shall be retained for ten
33 years from the date of the report and then shall be removed from the records of
34 the division.

35 2. Within ninety days after receipt of a report of abuse or neglect that is
36 investigated, the alleged perpetrator named in the report and the parents of the
37 child named in the report, if the alleged perpetrator is not a parent, shall be
38 notified in writing of any determination made by the division based on the
39 investigation. The notice shall advise either:

40 (1) That the division has determined by a probable cause finding prior to
41 August 28, 2004, or by a preponderance of the evidence after August 28, 2004,
42 that abuse or neglect exists and that the division shall retain all identifying
43 information regarding the abuse or neglect; that such information shall remain
44 confidential and will not be released except to law enforcement agencies,

45 prosecuting or circuit attorneys, or as provided in section 210.150; that the
46 alleged perpetrator has [sixty] **thirty** days from the date of receipt of the notice
47 to seek reversal of the division's determination through a review by the child
48 abuse and neglect review board as provided in subsection 3 of this section; or

49 (2) That the division has not made a probable cause finding or determined
50 by a preponderance of the evidence that abuse or neglect exists.

51 3. Any person named in an investigation as a perpetrator who is
52 aggrieved by a determination of abuse or neglect by the division as provided in
53 this section may seek an administrative review by the child abuse and neglect
54 review board pursuant to the provisions of section 210.153. Such request for
55 review shall be made within [sixty] **thirty** days of notification of the division's
56 decision under this section. In those cases where criminal charges arising out of
57 facts of the investigation are pending, the request for review shall be made within
58 [sixty] **thirty** days from [the court's final disposition or dismissal of the charges]
59 **when an indictment is returned, an information filed, dismissal of the**
60 **charges or after the division's release of its investigative report to the**
61 **alleged perpetrator under this section.**

62 4. In any such action for administrative review, the child abuse and
63 neglect review board shall sustain the division's determination if such
64 determination was supported by evidence of probable cause prior to August 28,
65 2004, or is supported by a preponderance of the evidence after August 28, 2004,
66 and is not against the weight of such evidence. The child abuse and neglect
67 review board hearing shall be closed to all persons except the parties, their
68 attorneys and those persons providing testimony on behalf of the parties.

69 5. If the alleged perpetrator is aggrieved by the decision of the child abuse
70 and neglect review board, the alleged perpetrator may seek de novo judicial
71 review in the circuit court in the county in which the alleged perpetrator resides
72 and in circuits with split venue, in the venue in which the alleged perpetrator
73 resides, or in Cole County. If the alleged perpetrator is not a resident of the
74 state, proper venue shall be in Cole County. The case may be assigned to the
75 family court division where such a division has been established. The request for
76 a judicial review shall be made within [sixty] **thirty** days of notification of the
77 decision of the child abuse and neglect review board decision. In reviewing such
78 decisions, the circuit court shall provide the alleged perpetrator the opportunity
79 to appear and present testimony. The alleged perpetrator may subpoena any
80 witnesses except the alleged victim or the reporter. However, the circuit court

81 shall have the discretion to allow the parties to submit the case upon a stipulated
82 record.

83 6. In any such action for administrative review, the child abuse and
84 neglect review board shall notify the child or the parent, guardian or legal
85 representative of the child that a review has been requested.

210.305. 1. If emergency placement of a child in a private home
2 is deemed necessary, the children's division shall make diligent efforts
3 to contact and place the child with a grandparent or grandparents of
4 the child, except when the children's division determines that
5 placement with a grandparent or grandparents is not in the best
6 interest of the child. Such an emergency placement with a grandparent
7 or grandparents shall be subject to the provisions of section 210.482
8 regarding background checks for emergency placements.

9 2. For purposes of this section, the following terms shall mean:

10 (1) "Diligent efforts", a good faith attempt by the children's
11 division, which exercises reasonable efforts and care to utilize all
12 available services and resources related to meeting the ongoing health
13 and safety needs of the child, to locate a grandparent or grandparents
14 of the child after all of the child's physical health needs have been
15 attended to by the children's division;

16 (2) "Emergency placement", those limited instances when the
17 children's division is placing a child in the home of private individuals,
18 including neighbors, friends, or relatives, as a result of a sudden
19 unavailability of the child's primary caretaker.

20 3. Diligent efforts shall be made, if possible, to contact the
21 grandparent or grandparents of the child within three hours from the
22 time the emergency placement is deemed necessary for the child. If a
23 grandparent or grandparents of the child cannot be located within the
24 three-hour period, the child may be placed in a foster home; except
25 that, during the initial twenty-four-hour period after the emergency
26 placement is deemed necessary, the children's division shall continue
27 to make diligent efforts to locate and place the child with a
28 grandparent or grandparents.

210.565. 1. Whenever a child is placed in a foster home and the court has
2 determined pursuant to subsection 3 of this section that foster home placement
3 with relatives is not contrary to the best interest of the child, the children's
4 division shall give foster home placement to relatives of the

5 child. Notwithstanding any rule of the division to the contrary, **the children's**
6 **division shall make diligent efforts to locate the grandparents of the**
7 **child and determine whether they wish to be considered for placement**
8 **of the child.** Grandparents who request consideration shall be given preference
9 and first consideration for foster home placement.

10 2. As used in this section, the term "relative" means a **grandparent or**
11 **any other** person related to another by blood or affinity within the third
12 degree. The status of a grandparent shall not be affected by the death or the
13 dissolution of the marriage of a son or daughter.

14 3. The preference for placement with **grandparents or other** relatives
15 created by this section shall only apply where the court finds that placement with
16 such **grandparents or other** relatives is not contrary to the best interest of the
17 child considering all circumstances. If the court finds that it is contrary to the
18 best interest of a child to be placed with **grandparents or other** relatives, the
19 court shall make specific findings on the record detailing the reasons why the
20 best interests of the child necessitate placement of the child with persons other
21 than **grandparents or other** relatives.

22 4. The age of the child's relative shall not be the only factor that the
23 children's division takes into consideration when it makes placement decisions
24 and recommendations to the court about placing the child with such
25 **grandparent or other** relative.

26 5. For any Native American child placed in protective custody, the
27 children's division shall comply with the placement requirements set forth in 25
28 U.S.C. Section 1915.

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited
2 as the "Family Care Safety Act".

3 2. As used in sections 210.900 to 210.936, the following terms shall mean:

4 (1) "Child-care provider", any licensed or license-exempt child-care home,
5 any licensed or license-exempt child-care center, **in-home provider under**
6 **contract with the department of health and senior services**, child-placing
7 agency, residential care facility for children, group home, foster family group
8 home, foster family home, employment agency that refers a child-care worker to
9 parents or guardians as defined in section 289.005, RSMo. The term "child-care
10 provider" does not include summer camps or voluntary associations designed
11 primarily for recreational or educational purposes;

12 (2) "Child-care worker", any person who is employed by a child-care

13 provider, or receives state or federal funds, either by direct payment,
14 reimbursement or voucher payment, as remuneration for child-care services;

15 (3) "Department", the department of health and senior services;

16 (4) "Elder-care provider", any operator licensed pursuant to chapter 198,
17 RSMo, or any person, corporation, or association who provides in-home services
18 under contract with the [division of aging] **department**, or any employer of
19 nurses or nursing assistants of home health agencies licensed pursuant to
20 sections 197.400 to 197.477, RSMo, or any nursing assistants employed by a
21 hospice pursuant to sections 197.250 to 197.280, RSMo, or that portion of a
22 hospital for which subdivision (3) of subsection 1 of section 198.012, RSMo,
23 applies;

24 (5) "Elder-care worker", any person who is employed by an elder-care
25 provider, or who receives state or federal funds, either by direct payment,
26 reimbursement or voucher payment, as remuneration for elder-care services;

27 (6) "Patrol", the Missouri state highway patrol;

28 (7) "Employer", any child-care provider, elder-care provider, or
29 personal-care provider as defined in this section;

30 (8) "Personal-care attendant" or "personal-care worker", a person who
31 performs routine services or supports necessary for a person with a physical or
32 mental disability to enter and maintain employment or to live independently;

33 (9) "Personal-care provider", any person, corporation, or association who
34 provides personal-care services or supports under contract with the department
35 of mental health, [the division of aging,] the department of health and senior
36 services or the department of elementary and secondary education;

37 (10) "Related child care", child care provided only to a child or children
38 by such child's or children's grandparents, great-grandparents, aunts or uncles,
39 or siblings living in a residence separate from the child or children;

40 (11) "Related elder care", care provided only to an elder by an adult child,
41 a spouse, a grandchild, a great-grandchild or a sibling of such elder;

42 **(12) "Related personal care", care provided for a person with a**
43 **physical or mental disability by an adult child, spouse, grandchild,**
44 **great-grandchild, or sibling of such person.**

210.906. 1. Every child-care worker or elder-care worker hired on or after
2 January 1, 2001, or personal-care worker hired on or after January 1, 2002, shall
3 complete a registration form provided by the department. The department shall
4 make such forms available no later than January 1, 2001, and may, by rule,

5 determine the specific content of such form, but every form shall:

6 (1) Request the valid Social Security number of the applicant;

7 (2) Include information on the person's right to appeal the information
8 contained in the registry pursuant to section 210.912;

9 (3) Contain the signed consent of the applicant for the background checks
10 required pursuant to this section; and

11 (4) Contain the signed consent for the release of information contained in
12 the background check for employment purposes only.

13 2. Every child-care worker or elder-care worker hired on or after January
14 1, 2001, and every personal-care worker hired on or after January 1, 2002, shall
15 complete a registration form within fifteen days of the beginning of such person's
16 employment. Any person employed as a child-care, elder-care or personal-care
17 worker who fails to submit a completed registration form to the department of
18 health and senior services as required by sections 210.900 to 210.936 without
19 good cause, as determined by the department, is guilty of a class B misdemeanor.

20 3. The costs of the criminal background check may be paid by the
21 individual applicant, or by the provider if the applicant is so employed, or for
22 those applicants receiving public assistance, by the state through the terms of the
23 self-sufficiency pact pursuant to section 208.325, RSMo. Any moneys remitted to
24 the patrol for the costs of the criminal background check shall be deposited to the
25 credit of the criminal record system fund as required by section 43.530, RSMo.

26 4. Any person licensed pursuant to sections 210.481 to 210.565 shall be
27 automatically registered in the family care safety registry at no additional cost
28 other than the costs required pursuant to sections 210.481 to 210.565.

29 5. Any person not required to register pursuant to the provisions of
30 sections 210.900 to 210.936 may also be included in the registry if such person
31 voluntarily applies to the department for registration and meets the requirements
32 of this section and section 210.909, including submitting to the background checks
33 in subsection 1 of section 210.909.

34 6. The provisions of sections 210.900 to 210.936 shall not extend to related
35 child care, related elder care or related personal care **that is not reimbursed**
36 **from state or federal moneys directly or indirectly.**

565.180. 1. A person commits the crime of elder abuse in the first degree
2 if he attempts to kill, knowingly causes or attempts to cause serious physical
3 injury, as defined in section 565.002, to any person sixty years of age or older or
4 an eligible adult as defined in section [660.250] **192.2100**, RSMo.

5 2. Elder abuse in the first degree is a class A felony.

 565.182. 1. A person commits the crime of elder abuse in the second
2 degree if [he] **such person**:

3 (1) Knowingly causes, attempts to cause physical injury to any person
4 sixty years of age or older or an eligible adult, as defined in section [660.250]
5 **192.2100**, RSMo, by means of a deadly weapon or dangerous instrument; or

6 (2) Recklessly [and purposely] causes serious physical injury, as defined
7 in section 565.002, to a person sixty years of age or older or an eligible adult as
8 defined in section [660.250] **192.2100**, RSMo.

9 2. Elder abuse in the second degree is a class B felony.

 565.184. 1. A person commits the crime of elder abuse in the third degree
2 if [he] **such person**:

3 (1) Knowingly causes or attempts to cause physical contact with any
4 person sixty years of age or older or an eligible adult as defined in section
5 [660.250] **192.2100**, RSMo, knowing the other person will regard the contact as
6 harmful or provocative; or

7 (2) Purposely engages in conduct involving more than one incident that
8 causes grave emotional distress to a person sixty years of age or older or an
9 eligible adult, as defined in section [660.250] **192.2100**, RSMo. The course of
10 conduct shall be such as would cause a reasonable person age sixty years of age
11 or older or an eligible adult, as defined in section [660.250] **192.2100**, RSMo, to
12 suffer substantial emotional distress; or

13 (3) Purposely or knowingly places a person sixty years of age or older or
14 an eligible adult, as defined in section [660.250] **192.2100**, RSMo, in
15 apprehension of immediate physical injury; or

16 (4) Intentionally fails to provide care, goods or services to a person sixty
17 years of age or older or an eligible adult, as defined in section [660.250]
18 **192.2100**, RSMo. The result of the conduct shall be such as would cause a
19 reasonable person age sixty or older or an eligible adult, as defined in section
20 [660.250] **192.2100**, RSMo, to suffer physical or emotional distress; or

21 (5) Knowingly acts or knowingly fails to act in a manner which results in
22 a grave risk to the life, body or health of a person sixty years of age or older or
23 an eligible adult, as defined in section [660.250] **192.2100**, RSMo.

24 2. Elder abuse in the third degree is a class A misdemeanor.

 565.188. 1. When any adult day care worker; chiropractor; Christian
2 Science practitioner; coroner; dentist; embalmer; employee of the departments of

3 social services, mental health, or health and senior services; employee of a local
4 area agency on aging or an organized area agency on aging program; funeral
5 director; home health agency or home health agency employee; hospital and clinic
6 personnel engaged in examination, care, or treatment of persons; in-home services
7 owner, provider, operator, or employee; law enforcement officer; long-term care
8 facility administrator or employee; medical examiner; medical resident or intern;
9 mental health professional; minister; nurse; nurse practitioner; optometrist; other
10 health practitioner; peace officer; pharmacist; physical therapist; physician;
11 physician's assistant; podiatrist; probation or parole officer; psychologist; social
12 worker; **personal care attendant as defined in section 208.900, RSMo;**
13 **owner, operator, or employee of a vendor as defined in section 208.900,**
14 **RSMo;** or other person with responsibility for the care of a person sixty years of
15 age or older, **or an eligible adult, as defined in section 620.250, RSMo,** has
16 reasonable cause to suspect that such a person has been subjected to abuse or
17 neglect, **or financial exploitation by any person, firm, or corporation as**
18 **defined in section 192.1200, RSMo,** or observes such a person being subjected
19 to conditions or circumstances which would reasonably result in abuse or neglect
20 **or financial exploitation by any person, firm, or corporation as defined**
21 **in section 570.145, RSMo,** he or she shall immediately report or cause a report
22 to be made to the department in accordance with the provisions of sections
23 [660.250 to 660.295] **192.2100 to 192.2130, RSMo.** Any other person who
24 becomes aware of circumstances which may reasonably be expected to be the
25 result of or result in abuse or neglect, **or financial exploitation by any**
26 **person, firm, or corporation as defined in section 570.145, RSMo,** may
27 report to the department.

28 2. Any person who knowingly fails to make a report as required in
29 subsection 1 of this section is guilty of a class A misdemeanor.

30 3. Any person who purposely files a false report of elder abuse or neglect,
31 **or financial exploitation by any person, firm, or corporation as defined**
32 **in section 570.145, RSMo,** is guilty of a class [A misdemeanor] **D felony.**

33 4. Every person who has been previously convicted of or pled guilty to
34 making a false report to the department and who is subsequently convicted of
35 making a false report under subsection 3 of this section is guilty of a class [D] **C**
36 **felony.**

37 5. Evidence of prior convictions of false reporting shall be heard by the
38 court, out of the hearing of the jury, prior to the submission of the case to the

39 jury, and the court shall determine the existence of the prior convictions.

565.200. 1. Any owner or employee of a skilled nursing facility, as defined
2 in section 198.006, RSMo, or an Alzheimer's special unit or program, as defined
3 in section 198.505, RSMo, who:

4 (1) Has sexual contact, as defined in section 566.010, RSMo, with a
5 resident is guilty of a class **[B] A** misdemeanor. Any person who commits a
6 second or subsequent violation of this subdivision is guilty of a class **[A**
7 misdemeanor] **D felony**; or

8 (2) Has sexual intercourse or deviate sexual intercourse, as defined in
9 section 566.010, RSMo, with a resident is guilty of a class **[A misdemeanor] C**
10 **felony**. Any person who commits a second or subsequent violation of this
11 subdivision is guilty of a class **[D] B** felony.

12 2. The provisions of this section shall not apply to an owner or employee
13 of a skilled nursing facility or Alzheimer's special unit or program who engages
14 in sexual conduct, as defined in section 566.010, RSMo, with a resident to whom
15 the owner or employee is married.

16 3. Consent of the victim is not a defense to a prosecution pursuant to this
17 section.

660.010. 1. There is hereby created a "Department of Social Services" in
2 charge of a director appointed by the governor, by and with the advice and
3 consent of the senate. All the powers, duties and functions of the director of the
4 department of public health and welfare, chapters 191 and 192, RSMo and others,
5 not previously reassigned by executive reorganization plan number 2 of 1973 as
6 submitted by the governor under chapter 26, RSMo, except those assigned to the
7 department of mental health, are transferred by type I transfer to the director of
8 the department of social services and the office of the director, department of
9 public health and welfare is abolished. The department of public health and
10 welfare is abolished. All employees of the department of social services shall be
11 covered by the provisions of chapter 36, RSMo, except the director of the
12 department and his secretary, all division directors and their secretaries, and no
13 more than three additional positions in each division which may be designated
14 by the division director.

15 2. It is the intent of the general assembly in establishing the department
16 of social services, as provided herein, to authorize the director of the department
17 to coordinate the state's programs devoted to those unable to provide for
18 themselves and for the rehabilitation of victims of social disadvantage. The

19 director shall use the resources provided to the department to provide
20 comprehensive programs and leadership striking at the roots of dependency,
21 disability and abuse of society's rules with the purpose of improving service and
22 economical operations. The department is directed to take all steps possible to
23 consolidate and coordinate the field operations of the department to maximize
24 service to the citizens of the state.

25 3. All the powers, duties and functions of the division of welfare, chapters
26 205, 207, 208, 209, and 210, RSMo, and others, are transferred by type I transfer
27 to the "Division of Family Services" which is hereby created in the department of
28 social services. The director of the division shall be appointed by the director of
29 the department. All references to the division of welfare shall hereafter be
30 construed to mean the division of family services of the department of social
31 services.

32 4. [All the powers, duties and functions of the board of nursing home
33 administrators, chapter 344, RSMo, are transferred by type I transfer to the
34 department of social services. The public members of the board shall be
35 appointed by the director of the department.

36 5.] The state's responsibility under public law 452 of the eighty-eighth
37 Congress and others, pertaining to the Office of Economic Opportunity, is
38 transferred by type I transfer to the department of social services.

39 [6. The state's responsibility under public law 73, Older Americans Act
40 of 1965, of the eighty-ninth Congress is transferred by type I transfer to the
41 department of social services.

42 7.] 5. All the powers, duties and functions vested by law in the curators
43 of the University of Missouri relating to crippled children's services, chapter 201,
44 RSMo, are transferred by type I transfer to the department of social services.

45 [8.] 6. All the powers, duties and functions vested in the state board of
46 training schools, chapter 219, RSMo, and others, are transferred by type I
47 transfer to the "Division of Youth Services" hereby authorized in the department
48 of social services headed by a director appointed by the director of the
49 department. The state board of training schools shall be reconstituted as an
50 advisory board on youth services, appointed by the director of the
51 department. The advisory board shall visit each facility of the division as often
52 as possible, shall file a written report with the director of the department and the
53 governor on conditions they observed relating to the care and rehabilitative
54 efforts in behalf of children assigned to the facility, the security of the facility and

55 any other matters pertinent in their judgment. Copies of these reports shall be
56 filed with the legislative library. Members of the advisory board shall receive
57 reimbursement for their expenses and twenty-five dollars a day for each day they
58 engage in official business relating to their duties. The members of the board
59 shall be provided with identification means by the director of the division
60 permitting immediate access to all facilities enabling them to make unannounced
61 entrance to facilities they wish to inspect.

[197.500. 1. The department shall maintain an employee
2 disqualification list and place on the employee disqualification list
3 the names of any persons who are or who have been employed by
4 any entity licensed pursuant to this chapter and who have been
5 finally determined by the department pursuant to section 660.315,
6 RSMo, to have knowingly or recklessly abused or neglected a
7 patient. For the purpose of this section, "abuse" and "neglect" shall
8 have the same meanings as such terms are defined in section
9 198.006, RSMo. For purposes of this section only, "knowingly" and
10 "recklessly" shall have the meanings that are ascribed to them in
11 this section. A person acts "knowingly" with respect to the person's
12 conduct when a reasonable person should be aware of the result
13 caused by his or her conduct. A person acts "recklessly" when the
14 person consciously disregards a substantial and unjustifiable risk
15 that the person's conduct will result in serious physical injury and
16 such disregard constitutes a gross deviation from the standard of
17 care that a reasonable person would exercise in the situation.

18 2. The department shall compile and maintain an employee
19 disqualification list in the same manner as the employee
20 disqualification list compiled and maintained by the department
21 pursuant to section 660.315, RSMo.]

[208.912. 1. When any adult day care worker; chiropractor,
2 Christian Science practitioner, coroner, dentist, embalmer,
3 employee of the departments of social services, mental health, or
4 health and senior services; employee of a local area agency on
5 aging or an organized area agency on aging program; funeral
6 director; home health agency or home health agency employee;
7 hospital and clinic personnel engaged in examination, care, or
8 treatment of persons; in-home services owner, provider, operator,

9 or employee; law enforcement officer; long-term care facility
10 administrator or employee; medical examiner; medical resident or
11 intern; mental health professional; minister; nurse; nurse
12 practitioner; optometrist; other health practitioner; peace officer;
13 pharmacist; physical therapist; physician; physician's assistant;
14 podiatrist; probation or parole officer; psychologist; vendor as
15 defined in section 208.900; personal care attendant; or social
16 worker has reasonable cause to believe that a consumer has been
17 abused or neglected as defined in section 660.250, RSMo, as a
18 result of the delivery of or failure to deliver personal care
19 assistance services, he or she shall immediately report or cause a
20 report to be made to the department. If the report is made by a
21 physician of the consumer, the department shall maintain contact
22 with the physician regarding the progress of the investigation.

23 2. When a report of deteriorating physical condition
24 resulting in possible abuse or neglect of a consumer is received by
25 the department, the department's case manager and the
26 department nurse shall be notified. The case manager shall
27 investigate and immediately report the results of the investigation
28 to the department nurse.

29 3. If requested, local area agencies on aging shall provide
30 volunteer training to those persons listed in subsection 1 of this
31 section regarding the detection and reporting of abuse and neglect
32 under this section.

33 4. Any person required in subsection 1 of this section to
34 report or cause a report to be made to the department who fails to
35 do so within a reasonable time after the act of abuse or neglect is
36 guilty of a class A misdemeanor.

37 5. The report shall contain the names and addresses of the
38 vendor, the personal care attendant, and the consumer, and
39 information regarding the nature of the abuse or neglect, the name
40 of the complainant, and any other information which might be
41 helpful in an investigation.

42 6. In addition to those persons required to report under
43 subsection 1 of this section, any other person having reasonable
44 cause to believe that a consumer has been abused or neglected by

45 a personal care attendant may report such information to the
46 department.

47 7. If the investigation indicates possible abuse or neglect of
48 a consumer, the investigator shall refer the complaint together
49 with his or her report to the department director or his or her
50 designee for appropriate action. If, during the investigation or at
51 its completion, the department has reasonable cause to believe that
52 immediate action is necessary to protect the consumer from abuse
53 or neglect, the department or the local prosecuting attorney may,
54 or the attorney general upon request of the department shall, file
55 a petition for temporary care and protection of the consumer in a
56 circuit court of competent jurisdiction. The circuit court in which
57 the petition is filed shall have equitable jurisdiction to issue an ex
58 parte order granting the department authority for the temporary
59 care and protection of consumer, for a period not to exceed thirty
60 days.

61 8. Reports shall be confidential, as provided under section
62 660.320, RSMo.

63 9. Anyone, except any person who has abused or neglected
64 a consumer, who makes a report pursuant to this section or who
65 testifies in any administrative or judicial proceeding arising from
66 the report shall be immune from any civil or criminal liability for
67 making such a report or for testifying, except for liability for
68 perjury, unless such person acted negligently, recklessly, in bad
69 faith, or with malicious purpose.

70 10. Within five working days after a report required to be
71 made under this section is received, the person making the report
72 shall be notified of its receipt and of the initiation of the
73 investigation.

74 11. No person who directs or exercises any authority as a
75 vendor, and no personal care attendant, shall harass, dismiss or
76 retaliate against a consumer because he or she or any member of
77 his or her family has made a report of any violation or suspected
78 violation of laws, standards or regulations applying to the vendor
79 or personal care attendant which he or she has reasonable cause to
80 believe has been committed or has occurred.

81 12. The department shall place on the employee
82 disqualification list established in section 660.315, RSMo, the
83 names of any persons who have been finally determined by the
84 department to have recklessly, knowingly or purposely abused or
85 neglected a consumer while employed by a vendor, or employed by
86 a consumer as a personal care attendant.

87 13. The department shall provide the list maintained
88 pursuant to section 660.315, RSMo, to vendors as defined in section
89 208.900.

90 14. Any person, corporation or association who received the
91 employee disqualification list under subsection 13 of this section,
92 or any person responsible for providing health care service, who
93 declines to employ or terminates a person whose name is listed in
94 this section shall be immune from suit by that person or anyone
95 else acting for or in behalf of that person for the failure to employ
96 or for the termination of the person whose name is listed on the
97 employee disqualification list.]

 [208.915. 1. Any person having reasonable cause to believe
2 that a misappropriation of a consumer's property or funds, or the
3 falsification of any documents verifying personal care assistance
4 services delivery to the consumer, has occurred may report such
5 information to the department.

6 2. For each report the department shall attempt to obtain
7 the name and address of the vendor, the personal care attendant,
8 the personal care assistance services consumer, information
9 regarding the nature of the misappropriation or falsification, the
10 name of the complainant, and any other information which might
11 be helpful in an investigation.

12 3. Any personal care assistance services vendor, or personal
13 care attendant who puts to his or her own use or the use of the
14 personal care assistance services vendor or otherwise diverts from
15 the personal care assistance services consumer's use any personal
16 property or funds of the consumer, or falsifies any documents for
17 service delivery, is guilty of a class A misdemeanor.

18 4. Upon receipt of a report, the department shall
19 immediately initiate an investigation and report information

20 gained from such investigation to appropriate law enforcement
21 authorities.

22 5. If the investigation indicates probable misappropriation
23 of property or funds, or falsification of any documents for service
24 delivery of a personal care assistance services consumer, the
25 investigator shall refer the complaint together with the
26 investigator's report to the department director or the director's
27 designee for appropriate action.

28 6. Reports shall be confidential, as provided under section
29 660.320, RSMo.

30 7. Anyone, except any person participating in or benefitting
31 from the misappropriation of funds, who makes a report under this
32 section or who testifies in any administrative or judicial proceeding
33 arising from the report shall be immune from any civil or criminal
34 liability for making such a report or for testifying except for
35 liability for perjury, unless such person acted negligently,
36 recklessly, in bad faith, or with malicious purpose.

37 8. Within five working days after a report required to be
38 made under this section is received, the person making the report
39 shall be notified in writing of its receipt and of the initiation of the
40 investigation.

41 9. No person who directs or exercises any authority in a
42 personal care assistance services vendor agency shall harass,
43 dismiss or retaliate against a personal care assistance services
44 consumer or a personal care attendant because he or she or any
45 member of his or her family has made a report of any violation or
46 suspected violation of laws, ordinances or regulations applying to
47 the personal care assistance services vendor or any personal care
48 attendant which he or she has reasonable cause to believe has been
49 committed or has occurred.

50 10. The department shall maintain the employee
51 disqualification list and place on the employee disqualification list
52 the names of any personal care attendants who are or have been
53 employed by a personal care assistance services consumer, and the
54 names of any persons who are or have been employed by a vendor
55 as defined in subdivision (10) of section 208.900, and who have

56 been finally determined by the department under section 660.315,
57 RSMo, to have misappropriated any property or funds, or falsified
58 any documents for service delivery to a personal care assistance
59 services consumer and who came to be known to the consumer,
60 directly or indirectly by virtue of the consumer's participation in
61 the personal care assistance services program.]

 [210.933. For any elder-care worker listed in the registry or
2 who has submitted the registration form as required by sections
3 210.900 to 210.936, an elder-care provider may access the registry
4 in lieu of the requirements established pursuant to section 660.315,
5 RSMo, or to subsections 3, 4 and 5 of section 660.317, RSMo.]

 [660.305. 1. Any person having reasonable cause to believe
2 that a misappropriation of an in-home services client's property or
3 funds, or the falsification of any documents verifying service
4 delivery to the in-home services client has occurred, may report
5 such information to the department.

6 2. For each report the department shall attempt to obtain
7 the names and addresses of the in-home services provider agency,
8 the in-home services employee, the in-home services client,
9 information regarding the nature of the misappropriation or
10 falsification, the name of the complainant, and any other
11 information which might be helpful in an investigation.

12 3. Any in-home services provider agency or in-home services
13 employee who puts to his or her own use or the use of the in-home
14 services provider agency or otherwise diverts from the in-home
15 services client's use any personal property or funds of the in-home
16 services client, or falsifies any documents for service delivery, is
17 guilty of a class A misdemeanor.

18 4. Upon receipt of a report, the department shall
19 immediately initiate an investigation and report information
20 gained from such investigation to appropriate law enforcement
21 authorities.

22 5. If the investigation indicates probable misappropriation
23 of property or funds, or falsification of any documents for service
24 delivery of an in-home services client, the investigator shall refer
25 the complaint together with the investigator's report to the

26 department director or the director's designee for appropriate
27 action.

28 6. Reports shall be confidential, as provided under section
29 660.320.

30 7. Anyone, except any person participating in or benefiting
31 from the misappropriation of funds, who makes a report pursuant
32 to this section or who testifies in any administrative or judicial
33 proceeding arising from the report shall be immune from any civil
34 or criminal liability for making such a report or for testifying
35 except for liability for perjury, unless such person acted
36 negligently, recklessly, in bad faith, or with malicious purpose.

37 8. Within five working days after a report required to be
38 made under this section is received, the person making the report
39 shall be notified in writing of its receipt and of the initiation of the
40 investigation.

41 9. No person who directs or exercises any authority in an
42 in-home services provider agency shall harass, dismiss or retaliate
43 against an in-home services client or employee because he or she
44 or any member of his or her family has made a report of any
45 violation or suspected violation of laws, ordinances or regulations
46 applying to the in-home services provider agency or any in-home
47 services employee which he or she has reasonable cause to believe
48 has been committed or has occurred.

49 10. The department shall maintain the employee
50 disqualification list and place on the employee disqualification list
51 the names of any persons who are or have been employed by an
52 in-home service provider agency and who have been finally
53 determined by the department to, pursuant to section 660.315,
54 have misappropriated any property or funds, or falsified any
55 documents for service delivery of an in-home services client and
56 who came to be known to the person, directly, or indirectly while
57 employed by an in-home services provider agency.]

2 [660.320. 1. Reports confidential under section 198.070,
3 RSMo, and sections 660.300 to 660.315 shall not be deemed a
4 public record and shall not be subject to the provisions of section
109.180, RSMo, or chapter 610, RSMo. The name of the

5 complainant or any person mentioned in the reports shall not be
6 disclosed unless:

7 (1) The complainant, resident or the in-home services client
8 mentioned agrees to disclosure of his or her name;

9 (2) The department determines that disclosure is necessary
10 in order to prevent further abuse, neglect, misappropriation of
11 property or funds, or falsification of any documents verifying
12 service delivery to an in-home services client;

13 (3) Release of a name is required for conformance with a
14 lawful subpoena;

15 (4) Release of a name is required in connection with a
16 review by the administrative hearing commission in accordance
17 with section 198.039, RSMo;

18 (5) The department determines that release of a name is
19 appropriate when forwarding a report of findings of an
20 investigation to a licensing authority; or

21 (6) Release of a name is requested by the division of family
22 services for the purpose of licensure under chapter 210, RSMo.

23 2. The department shall, upon request, provide to the
24 division of employment security within the department of labor and
25 industrial relations copies of the investigative reports that led to
26 an employee being placed on the disqualification list.]

[660.512. No rule or portion of a rule promulgated under
2 the authority of chapter 210, RSMo, shall become effective unless
3 it has been promulgated pursuant to the provisions of section
4 536.024, RSMo.]

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